Alberta Human Rights
and Citizenship Commission

Annual Review 2002 – 03

Alberta
GOVERNMENT OF ALBERTA

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Alberta Human Rights and Citizenship Commission

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Alberta Human Rights and Citizenship Commission

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Executive Summary

The Alberta Human Rights and Citizenship Commission

In Alberta, the *Human Rights, Citizenship and Multiculturalism Act* (the *Act*) protects Albertans from discrimination in certain areas and grounds. The purpose of the *Act* is to ensure all Albertans are offered an equal opportunity to earn a living, find a place to live and enjoy services customarily available to the public without discrimination.

The *Act* establishes the Alberta Human Rights and Citizenship Commission to carry out functions under the *Act*. [1] The Commission is an independent commission created by the Government of Alberta, which reports through the Ministry of Community Development. The Commission has a two-fold mandate:

- to foster equality
- to reduce discrimination

It fulfills this mandate through public education initiatives and the resolution and settlement of complaints of discrimination.

A chief commissioner and part-time commissioners are appointed by Order in Council. As the head of the Commission, the chief commissioner is responsible for keeping the Minister informed on human rights issues, providing the commissioners with guidance regarding their panel hearings and other functions, and providing the director with guidance regarding the overall goals and direction of the commission. In addition, the chief commissioner undertakes other related activities.

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[1] Section 16(1) of the *Act* outlines the functions of the Commission:

- to forward the principle that all persons are equal in: dignity, rights and responsibilities without regard to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, or sexual orientation,
- to promote awareness and appreciation of and respect for the multicultural heritage of Alberta society,
- to promote an environment in which all Albertans can participate in and contribute to the cultural, social, economic and political life of Alberta,
- to encourage all sectors of Alberta society to provide equality of opportunity,
- to research, develop and conduct educational programs designed to eliminate discriminatory practices related to race, religious beliefs, colour, gender, physical disability, mental disability, age, ancestry, place of origin, marital status, source of income, family status, or sexual orientation,
- to promote an understanding of, acceptance of and compliance with this act,
- to encourage and co-ordinate both public and private human rights programs and activities, and
- to advise the Minister on matters related to this act.

The primary responsibilities of the chief commissioner and commissioners in relation to complaint resolution and settlement is adjudicative. The chief commissioner reviews appeals of decisions made by the director to dismiss or discontinue complaints. He also appoints commissioners to serve on human rights panels (administrative tribunals) that hold public hearings into human rights complaints. The chief commissioner and commissioners also undertake other related activities.

In 2002 – 2003, the chief commissioner was Charlach Mackintosh. There were six part-time commissioners:

- Lori Andreachuk, Q.C.
- William P. Baergen, Ph.D.
- Beth Bryant
- Diane Colley-Urquhart
- Deborah Prowse
- Brenda Scragg
- Honorary Colonel Delano Tolley

An appointed director and employees handle the administrative responsibilities relating to the resolution and settlement of complaints made under the *Act*. This work is separate and distinct from the work of the chief commissioner in reviewing appeals and the work of commissioners in adjudicating human rights complaints. In keeping with the purposes of the *Act*, the director and employees also provide public information, education and consultation services and undertake other related activities.

Protection from discrimination under the *Human Rights, Citizenship and Multiculturalism Act*

The *Human Rights, Citizenship and Multiculturalism Act* protects Albertans against discrimination in the following areas:

- publications and notices
- goods, services, accommodation and facilities
- tenancy
- employment practices
- applications and advertising regarding employment
- membership in trade unions, employers' organizations or occupational associations

Within the areas listed above, it is a contravention of the *Act* to discriminate against any person on the basis of race, religious beliefs, colour, gender, physical disability, mental disability, ancestry, place of origin, marital status, family status or source of income. As of April 2, 1998, sexual orientation was read into the *Act* as a protected ground in all areas. Age is also a ground protected from discrimination, except in the areas of tenancy and goods and services.

In addition to the areas and grounds discussed above, the *Act* protects Albertans in the area of equal pay. This provision requires that employees who perform the same or substantially similar work for an employer must be paid at the same rate, regardless of gender.

The *Act* also prohibits a person from retaliating against any person who has made a complaint, given evidence about a complaint, or assisted anyone else in making a complaint. In addition, the *Act* does not allow a person to make a frivolous or vexatious complaint with malicious intent.

Education services

Education and the promotion of human rights are core functions of the Commission in its efforts to foster equality and reduce discrimination. Information provided through educational programs and facilitation services such as workshops, presentations and displays and consultations with organizations are helping to build awareness of the application and interpretation of human rights principles and legislation and supporting the capacity to implement change.

Following a major consultation with Alberta employers in 2001 – 02, the Commission has significantly increased its efforts to support employers, employees, unions and other partners in reducing discrimination and building inclusive workplaces. Guided by the results of the *Employers' Perspectives Research Project*, the Commission has developed new, comprehensive information resources on key human rights topics, launched a workshop series focused on human rights issues in the workplace and improved the Web site for users looking for information related to human rights and employment. The Web site's search function has also been improved to allow searching for employment-related discrimination and panel decisions by a variety of fields. Commission contributions to resources developed by other organizations have helped to build greater awareness of Alberta's human rights legislation.

Reviewing the human rights policies of organizations helped them set the stage for building more inclusive, non-discriminatory environments. Consultation and liaison with community and other organizations

helped support work done outside the Commission that promoted human rights and a society appreciative of diversity.

Albertans have responded positively to these initiatives, reflected in part by a 69% increase in both the number of workshops and workshop participants. In 2002 – 03, an average of 8,842 visits were made to the Web site on a monthly basis, with an average of 4,770 distinct visitors per month. The Commission's electronic information service has also seen an increase of over 150% in subscribers. On March 31, 2003 a total of 639 subscribers were receiving timely updates about human rights panel decisions and other information related to human rights and diversity.

A review of the Commission's awards program resulted in a recommendation that the commission discontinue the program and consider new strategies to build greater awareness and recognition for human rights and diversity in the province. With the discontinuance of the awards program, the Commission decided to discontinue the formal program it offered in connection with International Human Rights Day, where the awards had been presented. Instead, the Commission placed greater emphasis on participation in and support of community-based events.

The Commission continued to collaborate with other organizations sharing its interests in human rights and diversity. The Commission participated in projects such as addressing hate-bias activity in Alberta, developing strategies to build communities more inclusive of diversity, and strengthening Aboriginal access and participation in urban centres. The Commission's collaborative efforts extended into the national human rights field through its leadership of a national initiative to improve the effectiveness of educational and promotional initiatives offered by human rights commissions. In the fall of 2002, the Commission began submitting updates on a regular basis for inclusion in the Payroll News and Views supplement that accompanies regular updates to the Carswell *Owner/Manager's Payroll Manual (Alberta)*. Over 300 Alberta businesses subscribe to this publication, which is updated 10 times a year.

The Commission shares its mandate to protect human rights and promote fairness and access with the Human Rights, Citizenship and Multiculturalism Education Fund. The Education Fund provides financial assistance to various organizations, as well as to the Commission for its educational programs. The chief commissioner serves as vice-chair of the Education Fund Advisory Committee.

Resolution and adjudication of human rights complaints

In 2002 – 2003, the Commission opened 835 complaint files, a significant increase from the 666 files opened in 2001 – 2002. As in the previous three years, physical disability and gender continued to be the two most common grounds on which complaints were made. Many complaints alleged discrimination on multiple grounds. Complaints most frequently cited discrimination in the area of employment, followed by publicly available goods, services, accommodation and facilities.

While the number of files that opened increased, the Commission also closed significantly more files (772) than it closed in 2001 – 02 (616). The increase in the number of files closed was partly due to the fact that compliance staff that had been involved in developing a computerized file management system in 2001 – 02 could be redeployed back to handling complaints. Development of a new computerized management system in 2001 – 02 has streamlined procedures. However, despite closing more files, the significant increase in files opened in 2002 – 03 led to an overall higher number of open files in the system at year-end. As of March 31, 2003, there were 694 open complaint files in the system. This compares to 631 files open on March 31, 2002.

The vast majority of complaints closed in 2002 – 2003 — 733 files (95%) — were dealt with through the Commission's compliance process, meaning they were resolved through conciliation, settled through investigation, dismissed or discontinued by the director, or withdrawn or abandoned by the complainant. Of the 733 files that closed through the Commission's compliance process, 59% were resolved through conciliation, exceeding the Commission's performance target to close 50% of files through conciliation. This significantly exceeds last year's results, when 49% of files were resolved through conciliation. This is an important performance target because files that close at this stage do not move on to the more time- and labour-intensive investigation stage or to the panel stage.

The remaining 39 files (five per cent) that closed in 2002 – 03 closed through the panel process. The panel process is independent from the work of Commission staff in resolving and settling complaints. Human rights panels are appointed by the chief commissioner and are composed of human rights commissioners.

In 2002 – 2003, the parties settled eight of the 39 complaints scheduled for panel hearings prior to a hearing. Of the remaining 31 complaint files, human rights panels found merit in 21 of these

complaints, found no merit in three, and seven complaint files were closed for other reasons, including decisions by the panel on the validity of severance agreements signed by the complainants.

The Commission received clarification from the courts on various legal matters that strengthened the interpretation of the legislation.

To ensure the fairness and transparency of the adjudicative services offered by the Commission, the commissioners developed a code that explains the standard of conduct they adhere to when chairing or serving on human rights panels. This code has been posted on the Commission's Web site and is available in print as well.

The Commission continued undertaking strategies to improve the complaint file management process, including hiring conciliators, investigators, and legal counsel on a contract basis; upgrading officer training; and improving technology support. Continuing to share approaches to handling complaints between regions and with other commissions also led to improvements in processes.

The overall time frame for closing complaints provided by the regional offices and the director's office decreased significantly in 2002 – 2003 to an average of 302 days and a median of 181 days. The Commission's performance target is to close files through these processes within 435 days from the date a complaint is accepted. When all files closed in 2002 – 2003 are considered, including those that were reviewed by the chief commissioner and went through the panel process, these timelines increased to an average of 325 days and a median of 182 days, well below the time required to close files in 2001 – 02.

Results

Results achieved through education services

The Commission's goal through its education services was to support Albertans in building a fair and equitable society. Specific objectives for the period 2002 through 2005 included:

- Building awareness of the Commission's programs and services, human rights content and Commission processes
- Building knowledge and skills with targeted audiences leading to change
- Building partnerships to create change, and
- Ensuring relevant, effective, efficient and accessible programs and services

Supporting Albertans in building inclusive workplaces

In March 2002 the Commission released the results of a major survey of over 560 Alberta employers. The study was undertaken to learn more about employers' perspectives and experiences related to human rights and to determine how the Commission could support employers' efforts to reduce workplace discrimination and build inclusive workplaces. It showed that while Alberta employers believe respecting human rights is good for business, they want to learn more about the legal responsibilities for human rights, how to resolve human rights complaints within their own organizations and strategies for building more inclusive workplaces.

The study has guided Commission efforts to develop resources and programs to help build positive human rights practices that are in line with legislation and that increase productivity and business results. The results of the study were disseminated through the media, through presentations to key stakeholders and on the Web site and received positive response. Key initiatives informed by the results of this study include new resources, new educational programs and changes to the commission's Web site (all discussed below).

New information resources developed

Resources such as information sheets support the responses staff provide to telephone inquiries and media calls, and they are often accessed from the Web site, mailed, faxed or handed out to people making inquiries. Resource materials were available at the Commission's offices, on the Commission's Web site, through hard copy order forms, at special events, and through other agencies.

Two new comprehensive interpretive bulletins were launched in 2002 – 03 on topics that employers identified as priorities in the employer study: *Duty to Accommodate* and *Rights and responsibilities*

related to pregnancy, childbirth and adoption. The latter publication incorporated input from Employment Standards. The Commission has received positive feedback on both these new resources from a range of users, including human resource consultants and legal counsels.

The Commission's information sheet collection was redesigned to update the design and improve readability. Three information sheets were revised. The Commission's educational services brochure and bookmark were also updated.

Work was begun on developing a number of new information resources, scheduled for completion in 2003 – 04.

Launch of new workshops targeted to the workplace

In 2002 – 03 the Commission launched a workshop series organized into six modules on key human rights topics in the workplace:

- *A respectful and inclusive workplace,*
- *Human rights legislation in the workplace,*
- *Discrimination and harassment in the workplace,*
- *The duty to accommodate;*
- *Human rights and the employment process; and*
- *The human rights complaint process.*

The workshops were offered publicly in five centers across Alberta as well as offered on a request basis to organizations and associations and tailored to their specific needs. Over 100 workshops and presentations were delivered to over 2,700 Albertans to support their work in building positive work environments, an increase of approximately 69% in both the number of workshops and presentations and the number of participants as compared with the previous year.

Communicating through the Web site

The Web site remained an important source of information about the protection of human rights and the promotion of fairness and access. It is a key communication tool for the Commission. In addition to clients accessing the Web site on their own, human rights staff frequently refer callers to the Web site for more information. The Web site continues to be improved. In 2002 – 03 a new section on human rights in the workplace brought all resources related to human rights and employment into one area for ease of access. A new, improved search function supports users interested in searching for panel decisions related to the area of employment, as well as other areas. Panel decisions can now be searched by fields including date, party name, area and ground. As well, a standard format was developed for the panel summaries, and all existing panel summaries were rewritten to meet the new standard. During 2002 – 03 the Commission Web

site received an average of 8,442 visits per month from an average of 4,770 distinct visitors per month. The average length of a visit to the Commission's Web site in 2002 – 03 was 14 minutes.

Increased subscribers to the electronic information service

In 2001 – 02 the Commission launched an electronic information service to provide Albertans with timely information related to human rights and diversity. Eleven editions of the new service, called Alberta Human Rights Information Service (AHRIS) were distributed in 2002 – 03. The number of subscribers increased by more than 150% over the previous year. Six hundred and thirty-nine subscribers received the e-mail updates as of March 31, 2003.

Educational videos now available on the Web site

The Commission's two educational video kits, *Discrimination and the Law* and *Understanding Gender Discrimination*, were made available on the Web site so that Albertans have access to these resources on a 24/7 basis. Each of the vignettes on the videos can be accessed separately and are accompanied by an on-line users' guide. The complete video kits remain available for purchase.

Changes to the Commission's award program

A review of the Commission's award program by a task force that included commissioners, past award recipients and the public resulted in a recommendation that the Commission discontinue its existing award program. The task force recommended a number of strategies for building greater awareness and recognition for human rights and diversity in the province that it believed would be more effective than the previous awards program. These included establishing an human rights in the workplace award in partnership with the business community; working with a media partner to establish an human rights awareness program; developing a community-based recognition program; and maintaining continuing relationships with Commission "alumni," including former commissioners and award winners. Commissioners accepted the recommendations in principle, and work began on developing program proposals for the first two initiatives.

Marking International Human Rights Day

Prior to 2002 – 03, recipients of awards under the Commission's award program were presented with their awards at an event held in conjunction with International Human Rights Day. With the discontinuance of its award program, the Commission was able to reconsider its strategy for marking International Human Rights Day. Instead of organizing its own program, the Commission participated in and supported community-based events, as well as promoting media awareness of the significance of the day. The Commission also promoted the Human Rights Day Kit, a helpful toolkit of program

ideas and resources to help communities, schools and organizations in planning their own celebrations to mark International Human Rights Day or celebrations of other significant days.

Other Commission strategies

The Commission receives telephone inquiries from employers and others seeking help to develop and implement human rights policies and to create respectful and inclusive workplaces. Where requested, Commission staff consulted with businesses and community organizations to develop anti-discrimination policies for their organizations. The Commission's portable display was set up a numerous venues to help build awareness of its programs and services.

Contributions to the national human rights community

The Commission participated in a variety of committees and community initiatives to promote equality and reduce discrimination.

Building on efforts begun in 2001 – 02, the Commission coordinated a national project to improve the effectiveness of educational programs offered by human rights commissions and fair practice offices across Canada. Representatives from across Canada met in Ottawa over three days to conduct an analysis of current educational initiatives, to build their capacity to conduct outcome-based program planning and evaluation and to consider future directions. A national inventory of awareness and educational programs completed in 2001 – 02 was updated, ready for translation and publication in 2003 – 04.

The Commission's contributions to the national human rights field also involved presentations to and participation in the Canadian Association of Statutory Rights Association's 2002 conference in Prince Edward Island. The Commission also participated in a two-day meeting in British Columbia of staff from commissions across western Canada. This meeting was part of the Commission's ongoing liaison with other provincial and federal commissions to share best practices and address emerging issues. The Commission continued working with legal counsels, policy and research and educational staff of other commissions to share information on current issues, new developments and best practices.

Collaborative initiatives to build awareness and support change

The Commission was involved in a variety of government- and community-based initiatives to support the outcome of a more inclusive, fair and respectful society. Some examples include the following:

- The successful integration of human rights and *Employment Standards Code*-related entitlement information in the commission's new bulletin *"Rights and responsibilities related to pregnancy, childbirth & adoption"* led to work being initiated on a joint federal/provincial publication to

provide Albertans with a "one-window" approach to information on pregnancy benefits and entitlements.

- In 2002 – 03 the Commission continued to play a lead role with federal and provincial government departments and agencies and the Alberta Association of Chiefs of Police to develop a provincial strategy to deal with hate-bias activity. The Commission made presentations on this initiative to the Alberta Association of Municipal Police Commissioners and at the Cultural Diversity Institute fall conference. A planning meeting with key stakeholders is scheduled for June 2003.
- The Commission served on the Calgary Cultural and Racial Diversity Strategy Taskforce, which championed the development of a proactive strategy to create a more inclusive, mutually respectful and equitable community. Following a major community conference in May 2002, a new organization, Diversity Calgary was established. The Commission continued its involvement in the initiative, examining strategies to support the development of policies and practices related to complaints as well as assisting the organization to build a communications plan.
- The Commission assisted the John Humphrey Centre for Peace and Human Rights in planning a symposium and public forum to commemorate the 20th anniversary of the *Canadian Charter of Rights and Freedoms*. The program, "Human Rights as Global Security: Future Directions," was held in Edmonton in April 2002.
- The Commission continued to participate in the Calgary Urban Aboriginal Initiative, as it considered an implementation strategy for recommendations contained in the *Listening Circle* report.
- In response to stakeholder concerns, the Commission served on an industry, labour and government committee to review options for addressing the issue of impairment at worksites.
- The Commission provided input to two publications developed by Human Resources and Employment: *Finders & Keepers: Recruitment and Retention Strategies* provides information to Alberta employers looking for information on strategies for recruiting and retaining staff; *A Guide for Midlife Career Moves* provides information to Albertans who are involved in midlife career moves.
- In the fall of 2002, the Commission began submitting updates on a regular basis for inclusion in the Payroll News and Views supplement that accompanies regular updates to the Carswell *Owner/Manager's Payroll Manual (Alberta)*. Over 300 Alberta businesses subscribe to this publication, which is updated 10 times a year.

Human Rights, Citizenship and Multiculturalism Education Fund

The *Human Rights, Citizenship and Multiculturalism Act*, which created the Commission, also created the Human Rights, Citizenship and Multiculturalism Education Fund. The Education Fund receives an annual allocation from the Alberta Lottery Fund as well as a small amount of income from other sources, such as interest. The Education Fund provides financial support for the Commission's education programs and services as well as grants to community groups for educational programs and services that are in keeping with the purposes of the *Act*. The chief commissioner serves as vice-chair of the Human Rights, Citizenship and Multiculturalism Education Fund Advisory Committee, which provides the Minister with advice on the overall use of the fund and on specific grant applications. In 2002 – 03, Mr. Hung Pham, MLA (Calgary-Montrose), chaired the Education Fund Advisory Committee.

Results achieved through the complaint resolution and settlement process provided by the regional offices and director's office

The goal of the complaint resolution and settlement process provided by the regional offices and director's office was to offer timely and fair service and achieve high settlement and closure rates. Specific objectives included:

- Delivering high-quality complaint resolution and settlement processes
- Continuing to implement improvement strategies in the compliance core business, and
- Continuing to establish, monitor and evaluate benchmarks and operational performance measures

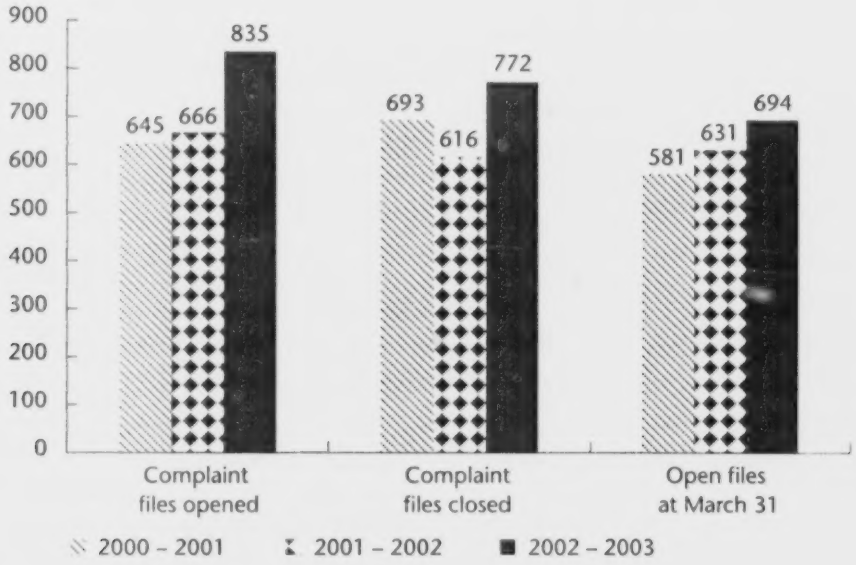
Confidential inquiries

Commission staff assisted Albertans by providing information about human rights issues, suggestions on steps they could take to resolve the matter themselves, suggestions on how to avoid discrimination, guidance on how to complete a human rights complaint form, print information, and referrals to the Commission Web site. When inquiries fell outside the Commission's mandate, staff referred callers to other agencies. In 2002 – 03, the Commission received an estimated 33,000 telephone contacts.

Complaint files opened and closed

By the end of the fiscal year, the Commission opened 835 complaint files, 169 files more than in the previous fiscal year.

Complaint files opened and closed and in the system in 2000 – 01, 2001 – 02 and 2002 – 03



Grounds of discrimination cited in complaint files opened

2002 – 2003 was the first full year that the Commission implemented a new computerized case management system. This new system provides a comprehensive approach to tracking the grounds cited in complaints under each section of the *Act*. Since the new system takes a different approach to reporting grounds, the results before the system was implemented partway through 2001 – 02 and this year, when the system was fully implemented, are not comparable.

A total of 2,185 grounds were cited in the 835 complaint files that opened from April 1, 2002 to March 31, 2003. Continuing the pattern from the previous year, physical disability and gender were the two most frequently cited grounds, followed by mental disability and race/colour.

Grounds cited in files opened from April 1, 2002 – March 31, 2003

	Number of times ground cited	Ground as a % of total number of grounds cited (2185* grounds)
Physical Disability	634	29%
Gender	485	22%
Mental Disability	267	12%
Race/Colour	221	10%
Ancestry/Origin	182	8%
Sexual Orientation	54	2%
Age	96	4%
Family Status	81	4%
Marital Status	32	1%
Religious beliefs	82	4%
Source of Income	26	1%
Other	25	1%
Totals	**2,185**	**98%****

* Figures represent grounds cited in 835 complaints opened from April 1, 2002 – March 31, 2003.
** Percentages have been rounded

Sections of the *Act* cited in complaint files opened

As the method of recording the number of grounds cited in complaints changed partway through 2001 – 02, overall results in terms of numbers from 2002 – 03 cannot be compared with previous years. However, on an overall basis they remain consistent. As in previous years, most grounds cited discrimination in the area of employment practices, followed by discrimination in the area of publicly available goods, services, accommodation and facilities. Of the 2,185 grounds cited in 2002 – 03, the majority of grounds (1,739 grounds, 80%) cited section 7, the area of employment practices. The second most commonly cited section, section 4, publicly available goods, services, accommodation and facilities, was cited 273 times (12%). All remaining areas were cited less frequently.

The following table provides information on the percentage of complaint grounds cited in different sections of the *Act*.

Percentage of complaint grounds cited by section in files opened in 2002-03

	2002-03 (2,185 grounds cited in the 835 files opened)
Employment practices (Section 7)	80%
Goods, services, accommodation, facilities (Section 4)	12%
Tenancy (Section 5)	2%
Applications and advertisements re: employment (Section 8)	2%
Equal pay (Section 6)	1%
Membership in trade union, etc. (Section 9)	1%
Publications, notices (Section 3)	2%
Retaliation (Section 10.1)	0%
Frivolous or vexatious complaints with malicious intent (Section 10.2)	0%
Total	**100%***

Note: This table provides information on the percentage of complaint grounds cited under different sections of the *Act*. The table is based on the total number of grounds cited, not the number of complaint files opened. For example, of the 2,185 grounds cited in 2002 – 03, 1,739 grounds, or 80 of the total number of grounds cited, were in the area of employment (section 7).

*Percentages have been rounded.

Disposition of closed complaint files

The Commission closed 772 complaint files in 2002 – 03. The vast majority of complaints — 733 files (95%) — were dealt with through the Commission's compliance process, meaning they were settled by the parties through conciliation or investigation, dismissed or discontinued by the director, or withdrawn or abandoned by the complainant. The remaining five per cent of files were handled through the Commission's panel process, and are discussed later in this review.

Conciliated files

The majority of complaint files were resolved by the parties with the help of a conciliator provided by the Commission. The 59% of the complaints (452 files) that were resolved through conciliation in 2002 – 03 were significantly greater than the 49% that were resolved this way in the previous year. Conciliation is a voluntary, non-adversarial way of resolving disputes. The conciliator is an impartial person who works with the complainant and respondent to generate possible solutions to the complaint.

Investigated files

In 2002 – 03, 12% of the complaints (91 files) settled through investigation. This compares to 15% of the complaint files settled through investigation in 2001 – 02 and 13% settled through investigation in 2000 – 01. If conciliation does not resolve the complaint, staff conduct an investigation to establish the facts of the case and determine whether or not there is merit to the complaint. If the investigator believes there is merit to the case, staff try again to help the parties reach a settlement.

Dismissed files

In 2002 – 03, the director dismissed 73 complaint files. In her opinion, the complaints had no merit, that is, there was no discrimination as defined by the *Human Rights, Citizenship and Multiculturalism Act* or if there was discrimination, it was reasonable and justifiable under the circumstances.

Forty-three (43) of the 73 files dismissed by the director were not appealed and these files were closed as dismissed, once the appeal period ended. Thirty (30) of the 73 files dismissed by the director were appealed to the chief commissioner. The chief commissioner upheld the director's decision for 25 of these files, and they were subsequently closed as dismissed. The chief commissioner overturned the director's decision on 5 files. With the complainant's consent, these files remained open and proceeded to panel.

To summarize, the director dismissed 73 files in total. Of these files, 68 (43 plus 25) were closed as dismissed. This is 9% of the total number of files closed in 2002 – 03, which is a lower percentage than the previous two fiscal years, when 12% of files that closed were closed as dismissed. Five files dismissed by the director remained open and proceeded to panel because the chief commissioner overturned the director's decision.

Discontinued files

The director may discontinue a complaint, if she believes the complainant has refused to accept a settlement offered by the respondent that is fair and reasonable. In 2002 – 2003, the director did not discontinue any files.

Withdrawn or abandoned files

In 2002 – 03, 122 complaints (16%) were closed because complainants withdrew or abandoned their complaints, compared to 2001 – 02 when 18% of complaint files (110 files) were either withdrawn or abandoned.

In 2002 – 03, 72 complaint files were withdrawn and 50 files were abandoned. Complainants withdraw their complaints for a variety of reasons. They may do so when they agree there is no merit to their complaint, or when they settle the dispute in another forum such as a grievance procedure or civil court action and withdrawal of the human rights complaint is part of the settlement agreement. The Commission considers a file to be abandoned when, for whatever reason, the complainant decides not to maintain contact with the Commission.

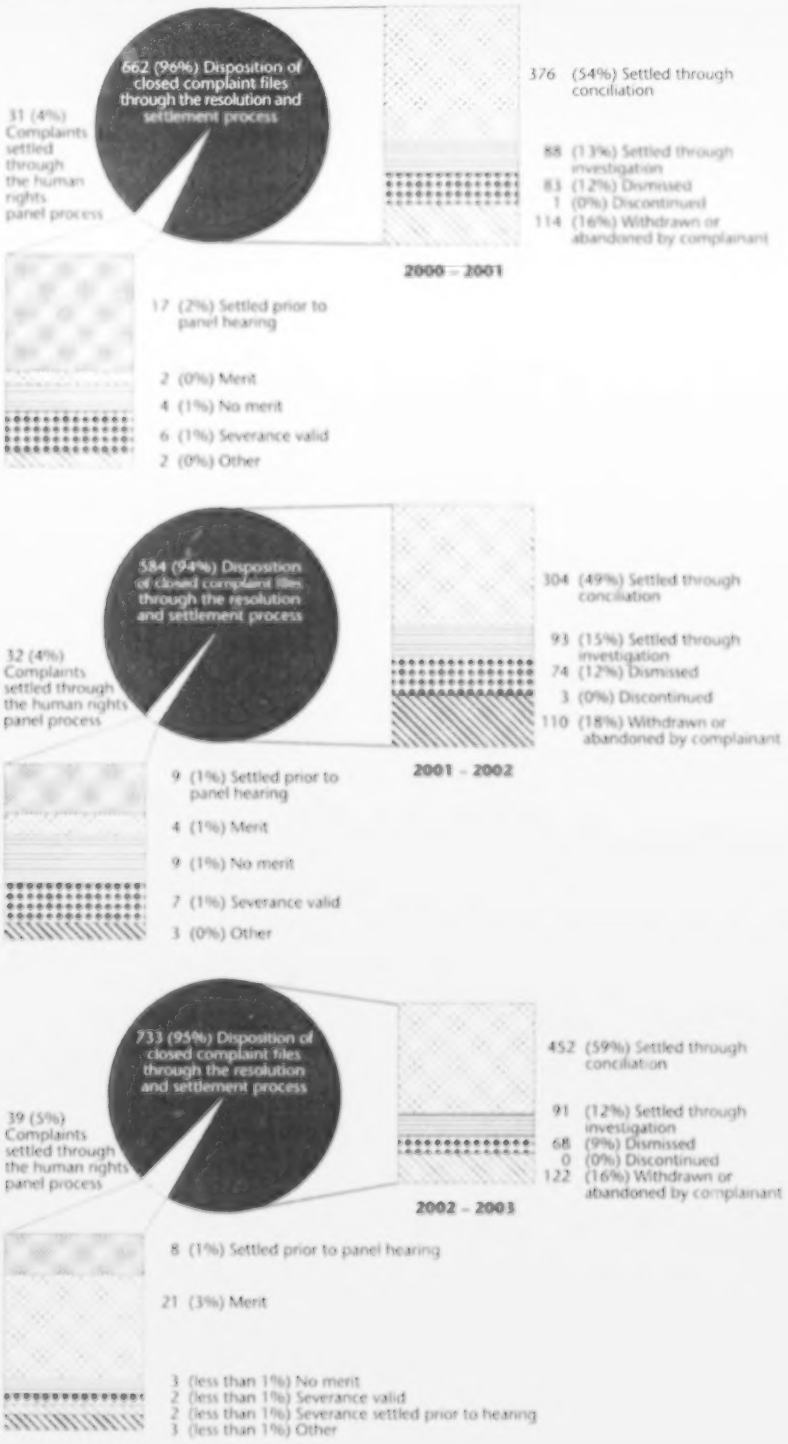
Disposition of complaint files closed in 2000 – 01, 2001 – 02 and 2002 – 03

Percentages may not total 100% due to rounding.

662 (96%) Disposition of closed complaint files through the resolution and settlement process
31 (4%) Complaints settled through the human rights panel process
376 (54%) Settled through conciliation
98 (14%) Settled through investigation
83 (12%) Dismissed
1 (0%) Discontinued
114 (16%) Withdrawn or abandoned by complainant
2000 – 2001
13 (2%) Settled prior to panel hearing
2 (0%) Merit
4 (1%) No merit
6 (1%) Severance valid
2 (0%) Other
584 (94%) Disposition of closed complaint files through the resolution and settlement process
32 (4%) Complaints settled through the human rights panel process
104 (49%) Settled through conciliation
93 (15%) Settled through investigation
74 (12%) Dismissed
1 (0%) Discontinued
110 (18%) Withdrawn or abandonrd by complainant
2001 – 2002
9 (1%) Settled prior to panel hearing
4 (1%) Merit
9 (1%) No merit
7 (1%) Severance valid
3 (0%) Other
733 (95%) Disposition of closed complaint files through the resolution and settlement process
39 (5%) Complaints settled through the human rights panel process
452 (59%) Settled through conciliation
91 (12%) Settled through investigation
68 (9%) Dismissed
0 (0%) Discontinued
122 (16%) Withdrawn or abandoned by complainant
2002 – 2003
8 (1%) Settled prior to panel hearing
21 (3%) Merit
3 (less than 1%) No merit
2 (less than 1%) Severance valid
2 (less than 1%) Severance settled prior to hearing
1 (less than 1%) Other

Disposition of complaint files closed in 2000 – 01, 2001 – 02 and 2002 – 03

Percentages may not total 100% due to rounding.

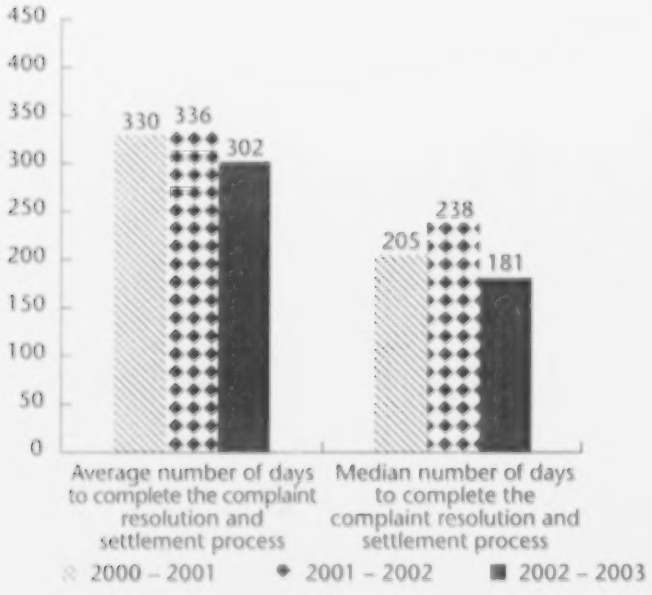

662 (96%) Disposition of closed complaint files through the resolution and settlement process
31 (4%) Complaints settled through the human rights panel process
376 (54%) Settled through conciliation
88 (13%) Settled through investigation
83 (12%) Dismissed
1 (0%) Discontinued
114 (16%) Withdrawn or abandoned by complainant
2000 – 2001
17 (2%) Settled prior to panel hearing
2 (0%) Merit
4 (1%) No merit
6 (1%) Severance valid
2 (0%) Other
584 (94%) Disposition of closed complaint files through the resolution and settlement process
32 (4%) Complaints settled through the human rights panel process
304 (49%) Settled through conciliation
93 (15%) Settled through investigation
74 (12%) Dismissed
3 (0%) Discontinued
110 (18%) Withdrawn or abandoned by complainant
2001 – 2002
9 (1%) Settled prior to panel hearing
4 (1%) Merit
9 (1%) No merit
7 (1%) Severance valid
3 (0%) Other
733 (95%) Disposition of closed complaint files through the resolution and settlement process
39 (5%) Complaints settled through the human rights panel process
452 (59%) Settled through conciliation
91 (12%) Settled through investigation
68 (9%) Dismissed
0 (0%) Discontinued
122 (16%) Withdrawn or abandoned by complainant
2002 – 2003
8 (1%) Settled prior to panel hearing
21 (3%) Merit
3 (less than 1%) No merit
2 (less than 1%) Severance valid
2 (less than 1%) Severance settled prior to hearing
3 (less than 1%) Other

Time frame for closed complaints

The Commission's performance target for completing the complaint resolution and settlement process provided by the regional offices and director's office is a maximum of 435 days from the day the complaint is accepted. Included in this target is the time it took for each file to be settled by the parties at the conciliation or investigation stage, dismissed or discontinued by the director, withdrawn or abandoned by the complainant, or forwarded by the director to the chief commissioner for a panel hearing.

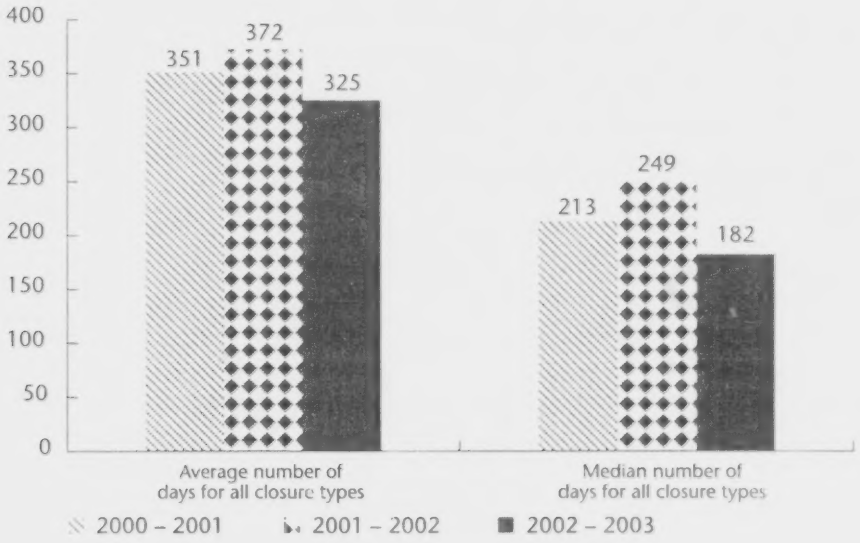
The files that closed in 2002 – 03 required less time on average to close than in the previous year. The average time it took to complete the complaint resolution and settlement process provided by the regional offices and director's office was 302 days. The median time was 181 days. As well, a greater percentage of files closed within the target time frame of 435 days as compared with the two previous years. The Commission met its performance target of completing this process within a maximum of 435 days for 72% of the files (557 of the 772 files that closed in 2002 – 03). This compares to 68% of the files closed in 2001 – 02 and 70% of the files closed in 2000 – 01.

Average and median number of days to complete the complaint resolution and settlement process provided by the regional offices and director's office for files that closed in 2000 – 01, 2001 – 02 and 2002 – 03



Some files go through the review and panel processes provided by the chief commissioner and commissioners. If the time it took to complete the review and panel process is added to the time it took to complete the complaint resolution and settlement process provided by the regional offices and director's office, the above time lines increase somewhat as shown in the following table. The figures show that the average and medium number of days for all files to close has decreased as compared with the past two years.

Average and median number of days for all closure types for files that closed in 2000 – 01, 2001 – 02 and 2002 – 03



Results achieved through the complaint adjudication process

The goal of the complaint adjudication process for the 2002 through 2005 period was to offer timely and fair service in the adjudication of complaints and achieve high settlement and closure rates. Specific objectives included:

- Delivering high-quality services in adjudicating appeals and human rights panels
- Continuing to implement improvement strategies in the appeal and human rights panel processes

Appeals reviewed by the chief commissioner

In 2002 – 03, the chief commissioner completed reviews on 30 files, slightly fewer files than he reviewed in 2001 – 02. The chief commissioner's decisions are summarized in the tables below.

Appeals reviewed by the chief commissioner in 2002 – 03

Type of Appeal	Number of decisions upheld	Number of decisions overturned	Total number of appeals
Dismissal	25	5	30
Discontinuance	0	0	0
Totals	**25**	**5**	**30**

Appeals reviewed by the chief commissioner in 2001 – 02

Type of Appeal	Number of decisions upheld	Number of decisions overturned	Total number of appeals
Dismissal	28*	3	31
Discontinuance	1	0	1
Totals	**29**	**3**	**32**

*Note that 26 of the 28 "dismissal" files listed in the "Number of decisions upheld" column were appeals of decisions made by the director in 2001 – 02. In two cases, the chief commissioner's decision was the second decision made by him on files that had been closed in previous fiscal years. In one case, the chief commissioner was directed by the Court to make a second decision as a result of a judicial review. In the other case, the complainant provided additional information that made a second decision appropriate.

Appeals reviewed by the chief commissioner in 2000 – 01

Type of Appeal	Number of decisions upheld	Number of decisions overturned	Total number of appeals
Dismissal	21	8	29
Discontinuance	1	1	2
Totals	**22**	**9**	**31**

Disposition of complaints scheduled for or heard by panels

Thirty-nine (five percent) of the files that closed in 2002 – 03 were dealt with through the panel process, which is the same percentage of files that closed through the panel process in 2001 – 02. The director refers complaints to a panel when she believes there is merit to the complaint but the complainant and respondent are unable to settle. The chief commissioner refers complaints to a panel when he believes the complaint should not have been dismissed or discontinued by the director as there is a reasonable basis in the evidence to proceed to a hearing. The panel process is independent from the work of Commission staff in receiving and resolving complaints. Human rights panels are composed of human rights commissioners and are appointed by the chief commissioner.

The 39 files that closed after being referred to panel had the following outcomes:

- Parties settled eight files prior to the panel hearing, usually with the assistance of Commission staff.
- 21 files went through a panel hearing where the panel found merit to the complaints and ordered an appropriate remedy.
- Three files went through a panel hearing where the panel found no merit and dismissed the complaints.
- In 2002 – 03, the panel decided that two severance agreements were valid and enforceable, and the files were closed. Two other files involving severance agreements were resolved by the parties prior to a panel hearing and the files were closed.
- Three files were closed when the respondents died.

See the figures *Disposition of complaint files closed in 2000 – 01, 2001 – 02 and 2002 – 03* on page 12 of this report for comparative statistics of complaints closed through the human rights panel process over these three years.

Court decisions

The Commission received clarification from the courts on various legal matters, including the supremacy of human rights legislation and that the provisions which prohibit discrimination are to be broadly construed, the defenses are to be narrowly construed and the key provisions are to be adapted to changing social conditions. In judicial reviews, the courts continue to give deference to the chief commissioner where he has acted reasonably.

Code of conduct for commissioners

To ensure the fairness and transparency of the adjudicative services offered by the Commission, the commissioners developed a code of conduct that explains the standard of conduct they adhere to when chairing or serving on human rights panels.

Performance Measure

Measuring public perception of the protection of human rights in Alberta

An independent province-wide telephone survey of 1,000 adult Albertans is undertaken annually to determine how well adult Albertans believe human rights are protected in the province. Both the Commission and the Ministry of Community Development use the results as a performance measure relating to the goal of protecting human rights and promoting fairness and access for all Albertans.

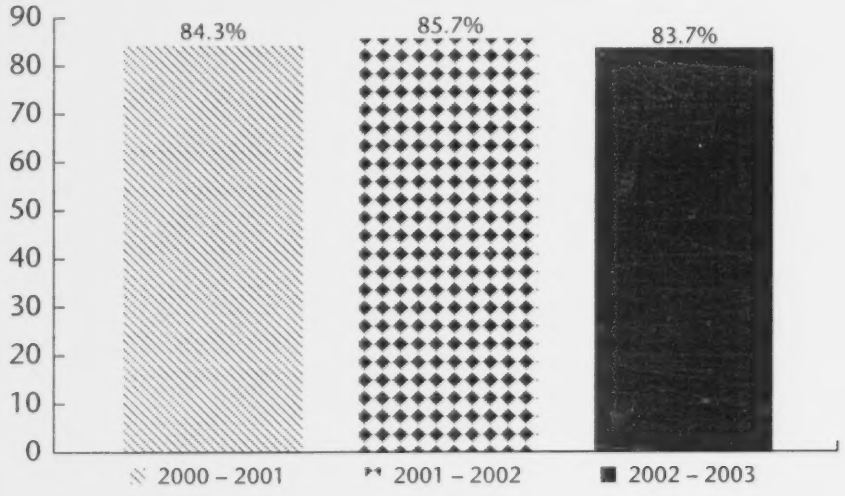
In the survey, respondents were asked, "Thinking about human rights, overall, how well do you feel human rights are protected in the province of Alberta?"

In 2002 – 03, approximately 84 percent of Albertans believed human rights were "fairly well" or "very well" protected in Alberta, a slight decrease from 2001 – 02.

While the results may be influenced by the work of the commission, given that this is a public perception survey, many other influences contribute to these results. Results may be influenced by respondents' personal characteristics such as age and interests, gender, race, employment status, and educational level. Media coverage of human rights issues, including legislative and judicial matters, both within Alberta as well as nationally and internationally, may also influence Albertans' perceptions.

Percentage of Albertans who believe human rights in Alberta are very well or fairly well protected

Ministry Target 2002 – 2005: 85%



Source: Angus Reid Group, 1998 – 1999, Research Innovations Inc., 1999 – 2003.

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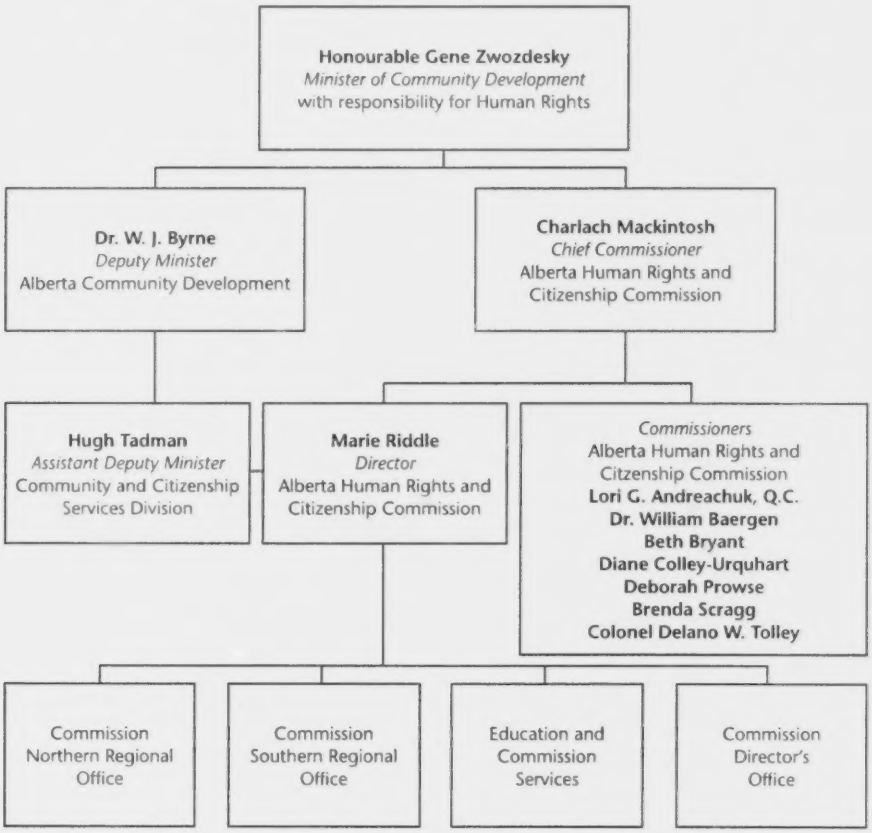
Appendix 1

Human Rights & Citizenship Commission Organizational Chart and Relationship to the Ministry of Community Development



Appendix 2

Overview of the complaint resolution and settlement process provided by the regional offices and director's office

Confidential inquiries and referrals

The Commission provides information on a confidential and free-of-charge basis to people who believe they may have experienced discrimination in Alberta, who are responding to a human rights issue, or who are seeking more information about human rights in Alberta. Commission staff provide information, not legal advice, and remain impartial on all inquiries. In addition to providing more information about the *Act* and its interpretation, those bringing an inquiry about a human rights issue to the Commission are able to consult with a human rights officer who can suggest what they might do to try to resolve the situation. People bringing inquiries to the Commission that are outside its mandate are referred to other agencies. Inquiries come from a broad spectrum of people including employers, landlords, educators and people who believe they have been discriminated against in some way.

Submitting a human rights complaint

If an individual's efforts fail to resolve a situation where they believe they experienced discrimination, and they wish the Commission to become directly involved, they may submit a human rights complaint. A complainant has the legal obligation of showing reasonable grounds for believing that discrimination has occurred and must submit the complaint within one year of the alleged incident.

Determining whether to accept a human rights complaint

Commission staff review human rights complaints to determine if they may be accepted. Complaints need to fall within the Commission's jurisdiction, be made within one year of the alleged incident of discrimination, and demonstrate reasonable grounds. A third party may make a complaint on behalf of another individual with that person's consent.

Next steps

If the Commission accepts the complaint, then the party being complained about, the respondent, is asked to respond to the complaint. Their response is then shared with the person who made the complaint, the complainant.

Two methods for resolving human rights complaints

When the Commission accepts a human rights complaint, two methods are used to resolve the matter. The first is conciliation; the second is investigation.

Conciliation

After the complaint has been filed, the case is assigned to a conciliator, who attempts to resolve the complaint by helping the parties find a mutually acceptable solution. Conciliation is a voluntary, non-adversarial approach to resolving disputes. An impartial conciliator helps the complainant and the respondent identify the issues, discuss the factors surrounding these issues and generate possible solutions. The objective of conciliation is to reach a resolution that is acceptable to both parties without an investigation.

During conciliation, it is the parties themselves who make any decisions to resolve the dispute. The conciliator simply helps them understand the issues and come to a mutually acceptable solution. The conciliator remains impartial during the process and does not judge the issues. The conciliator does not have the authority to impose any solution or decision on the parties. The Commission recognizes the rights of both parties to the complaint and, during conciliation, does not act on behalf of either party. The conciliator also helps the parties prepare a written agreement.

Conciliation is often successful because it leads to understanding between the parties. The decision about how to resolve a complaint is made jointly by both parties who share ownership of the decision and respect the outcome. To ensure the parties are as forthright as possible, all discussions and information supplied by the parties are held in confidence on a without prejudice basis. The Commission informs the parties that the information is not to be used for any purpose other than the conciliation. If conciliation is successful, the file is closed. If the complaint proceeds to an investigation, information arising during the conciliation is not used during the Commission's investigation.

Investigating human rights complaints

If conciliation is unsuccessful or declined by either party, the complaint is assigned to an investigator. Investigation is the impartial collection and examination of facts about the complaint by an investigator. The investigator will investigate the complaint, and analyze the evidence in relation to human rights law. During the investigation of a complaint, the parties are encouraged to provide any evidence they believe is important to a decision on whether or not there has been discrimination. At any time during the investigation, Commission staff will try to help the parties reach a settlement if they request assistance.

The objective of investigation is to determine whether discrimination occurred.

If the evidence supports a finding that there has been discrimination for which there is no legal defense, the complaint is described as having merit. At this point in most complaints, Commission staff share a written investigation report with the parties. The report includes a recommended remedy.

If the evidence shows there is no merit to the complaint, the director dismisses the complaint. The complainant may appeal a decision by the director to dismiss the complaint to the chief commissioner.

Settling a human rights complaint where merit is found

When a complaint has merit, Commission staff work with the parties to attempt to settle the complaint by securing a remedy for the complainant. Remedies may include financial and non-financial compensation for actual losses and/or suffering that occurred as a result of discrimination.

The objective of a remedy is to restore the complainant to the position he or she would have been in if the discrimination had not occurred. It is not the purpose of the *Act* to punish anyone. Recommended remedies are based on Canadian and Alberta legal precedents in human rights cases.

If a complainant has lost his or her job because of racial discrimination, the recommended remedy may call on the employer to do one or more of the following:

- provide an apology to the complainant
- provide a job reference for the complainant
- commit to not repeating the behaviour or ensuring the behaviour will not be repeated in the workplace
- re-instate the complainant to his or her former job
- make financial compensation to the complainant for lost income
- make financial compensation for pain and suffering, humiliation and embarrassment, or injury to dignity.

The recommended remedy may also call on the employer to:

- have an education session on human rights
- introduce a non-discrimination policy into the workplace
- stop a behaviour or practice found to be discriminatory
- set up internal processes to deal with any future complaints that may arise.

Complainants have a responsibility to minimize (mitigate) the losses they experienced through discrimination. For example, complainants have a responsibility to look for work and accept work if they lost a job as a result of discrimination.

The nature of the discrimination influences the recommended remedy. Each complaint is assessed individually.

Dismissing or discontinuing a complaint

The director dismisses a complaint if it has no merit.

The director may discontinue a complaint if the director is of the opinion that the person making the complaint has refused to accept a proposed settlement offered by the respondent that is fair and reasonable.

In both cases, where the director dismisses or discontinues a complaint, the complainant can request that the chief commissioner review the director's decision. This request must be made within 30 days of receiving the director's decision.

Withdrawn or abandoned complaints

Complainants may withdraw their complaints at anytime. This usually occurs when they believe there is no merit, or when they settle the dispute in another forum such as a grievance procedure or civil court action and withdrawal of the human rights complaint is part of the settlement agreement. When a complainant fails to maintain contact with the Commission, for whatever reason, their file may be considered "abandoned."

Appendix 3

Overview of the complaint adjudication process

Referral to the chief commissioner when parties are unable to settle a complaint

When parties are unable to settle a complaint that the director believes has merit, the director reports this to the chief commissioner. The chief commissioner then appoints a human rights panel to adjudicate the case.

Appeals to the chief commissioner

If the director dismisses or discontinues a complaint, the complainant may appeal the decision by writing to the chief commissioner within 30 days of receiving the director's decision. The chief commissioner conducts a documentary review of the information presented to him. If the chief commissioner decides that the complaint should not have been dismissed or that the proposed settlement was not fair and reasonable, he appoints a human rights panel to decide the matter. If he decides that the complaint should have been dismissed or that the proposed settlement was fair and reasonable, he denies the appeal.

The chief commissioner's decision on the appeal is final and binding on the parties, although it is subject to judicial review by the Court of Queen's Bench. A judicial review is a review of the process used in making the decision and must be requested within six months of receiving the chief commissioner's decision.

Human rights panels

Human rights panels are quasi-judicial, administrative tribunals that are appointed by the chief commissioner. Panels deal with complaints where the chief commissioner receives a report from the director that the parties are unable to settle a complaint where merit has been found, or where the chief commissioner decides that a complaint should not have been dismissed or discontinued by the director.

The chief commissioner appoints one or three commissioners to sit as the panel. The panel receives submissions from the parties and hears evidence about the situation that resulted in a complaint being filed. After hearing the evidence, the panel makes a decision about whether or not the complaint has merit. If the panel decides that the complaint has merit, the panel orders a remedy. If the panel finds that the complaint is without merit, then it will dismiss the complaint.

Where the panel finds that the complaint has merit, it will order a remedy that may result in one or more of the following outcomes:

- stopping the discrimination that the complaint is about
- stopping the respondent from contravening the *Act* in the same or any similar manner in the future
- providing the complainant with the rights, opportunities or privileges that were denied because of the discrimination
- compensating the complainant for any lost wages, income or expenses because of the discrimination
- any other action that the panel decides would place the person discriminated against in the position they would have been if the discrimination had not occurred. This might include, for example, ordering the respondent to pay the complainant damages or ordering the respondent to implement new policies.

The panel can also make an order concerning the responsibility for paying the costs involved in bringing the matter before the panel.

All parties receive the panel's decision. Once a decision is filed with the Court of Queen's bench, it has the same force and effect as a court decision. Either the complainant or respondent can appeal the panel's decision to the Court of Queen's Bench within 30 days of receiving the decision.

Appendix 4

Panel decisions 2002 – 03

Complete decisions are found on the Commission's Web site or are available on request directly from the Commission. Summaries of panel decisions are provided below.

Harvey Kane and the Jewish Defence League of Canada v. Alberta Report, Link Byfield, Michael Byfield and Ted Byfield (April 30, 2002; Deborah E. Prowse, Panel Chair)

Note: This panel decision was overturned on appeal by the Court of Queen's Bench and the matter was sent back for a rehearing. See Alberta Report, Link Byfield, and Michael Byfield v. Alberta Human Rights and Citizenship Commission, Harvey Kane and the Jewish Defence League of Canada 2002 ABQB 1081. This complaint settled prior to the panel hearing directed by the Court.

Susan L'Archeveque v. City of Calgary (May 17, 2002; Beth Bryant, Panel Chair)

Discrimination — Grounds — Physical Disability — Area — Employment — Repetitive Strain Injury — Employer's duty to accommodate, scope of — Respondent employer transferring complainant to a part-time position after complainant diagnosed with repetitive strain injury — Complainant forced to seek additional employment to supplement part-time salary — Respondent's efforts to accommodate insufficient — Complaint allowed

The complainant had been employed by the respondent City for 22 years, most recently holding a full-time position with the Police Interpretive Centre. She developed a repetitive strain injury that was diagnosed as a permanent condition and rendered her unable to perform her job. She was reassigned to another position on a term contract. When that position expired, she was unemployed. At that time the respondent's human resources department informed her that she would have to compete with other candidates for any positions with the respondent. In the interim, the complainant was assessed by the Workers' Compensation Board regarding her capabilities and limitations. The Board made recommendations regarding the kind of work the complainant could undertake. She was subsequently hired as an airport unit clerk in a part-time position, which was considered as a lateral transfer within the police services. She also sought additional part-time work, both with the respondent and from other employers, to supplement her income. The police services policy prohibited secondary employment unless such employment was characterized as a special assignment. After the complainant was hired for work at

the airport, the respondent ceased further attempts to accommodate the complainant. The complainant filed a complaint alleging that the respondent City discriminated against her on the basis of physical disability and failed to accommodate her disability to the point of undue hardship. **HELD:** Complaint allowed. Repetitive strain injury constituted a physical disability under the Act. The respondent, as the complainant's employer, had a duty to accommodate her physical disability, which it failed to do when it ceased further attempts in accommodating the complainant after she was hired at the airport. The respondent failed to adequately accommodate the complainant when it transferred her from a full-time position to a part-time position. As an employer, the respondent controlled the workplace and should have initiated the attempts in accommodating the complainant's physical disability, and not left it to the complainant to compete for other positions on her own. The complainant had received positive employment performance evaluations and had demonstrated her willingness to accept alternate employment positions and to seek retraining if necessary.

Appeal — The respondent appealed to the Court of Queen's Bench. The court upheld the panel decision.

Cases Considered: Andrews v. Law Society of British Columbia (1989), 1 S.C.R. 143; Central Okanagan School District No. 25 v. Renaud (1992) 2 S.C.R. 970; Calgary District Hospital Group v. U.N.A. (1994) 41 LSC (4th) 319; Conte v. Rogers Cablesystems Ltd. [1999] C.H.R.D. No. 4

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, ss. 7(1)(a), 7(1)(b), 44(1)(i)

Harvey Kane and The Jewish Defence League of Canada v. Milan Papez, Sr., Milan Papez, Jr. and The Silver Bullet (June 13, 2002; Deborah E. Prowse, Panel Chair)

Discrimination — Grounds — Race — Religious beliefs — Area — Publications — Pamphlet published and distributed by the respondents denigrating Jews and Asians — Pamphlet constituting "a notice, sign, symbol, emblem or other representation" within the meaning of the Individual's Rights Protection Act — Tone and language used by the respondents in their pamphlets were menacing and threatening, and reflected hatred and contempt of Jews and Asians — Limiting the respondents' right to freedom of expression was warranted to promote protection against discrimination — Intention to discriminate not relevant — A critical feature of human rights law is that it is the impact upon targeted groups and not intention that is determinative of discrimination — Respondents ordered to cease publication and display of similar material and to pay $2,500 in general damages to the complainants for pain and suffering — Complaint allowed

The complainants argued that the respondents published and distributed pamphlets that were derogatory and discriminatory to Jews and Asians, and alleged that the respondents discriminated or intended to discriminate on the basis of race and religious beliefs. The respondent's publications frequently referred to others as "Nazis." The respondents argued that they were publishing evidence of corrupt practices and injustices suffered by themselves and their families, that they were exposing the truth, and that they did not intend to discriminate or offend the complainants. **HELD:** Complaint allowed. The pamphlet constituted "a notice, sign, symbol, emblem or other representation" within the meaning of the *Individual's Rights Protection Act*. The panel characterized the pamphlets as "an anthology of accusations, criticisms, insults and denunciations reflecting the respondents' personal views, unsupported by reasonable grounds." The symbols used by the respondents, such as swastikas, elicited strong emotional responses from many who viewed them, and the tone used by the respondents in their publications was menacing and threatening. The language used in the pamphlets reflected hatred and contempt of Jews and Asians. A limitation on the respondent's right to freedom of expression was warranted to promote protection against discrimination. Regarding the respondent's argument that they did not intend to discriminate, the panel stated: "A critical feature of human rights law is that it is the impact upon targeted groups and not intention that is determinative of discrimination." Respondents were ordered to cease future publication of similar material and to pay $2,500 in general damages to the complainants for pain and suffering.

Cases Considered: Kane v. Church of Jesus Christ Christian Aryan Nations, No. 3, 1992, 18 C.H.R.R. D/1268; Saskatchewan Human Rights Commission v. Engineering Students' Society (1989), 10 C.H.R.R. 41243; Singer v. Iwasyk, (Unreported; November 5, 1976; Sask. Human Rights Trib.); Hameed Rasheed, Executive Director of the Black United Front of Nova Scotia v. Barry Bramhill, (1981) C.H.R.R. D/249; Kane et al v. Alberta Report et al, May, 2001, ABQB; Harry Abrams v. North Shore Free Press et al (No. 3) (1999) 3 C.H.R.R. 33 D/435; Canada (Human Rights Commission) v. Taylor, (SCC), 1990, No. 3 S.C.R. 892; Regina v. Keegstra (1990) (SCC)

Statutes and Regulations Considered: Individual's Rights Protection Act, R.S.A. 1980, c. I-2, s. 2; Human Rights, Citizenship and Multiculturalism Act, R.S.A. 1980, c. H-11.7, ss. 2(2), 3

Miscellaneous Works Considered: Concise Oxford Dictionary (6th Edition), 1976; Webster's New World Dictionary, 1988

Jayne LaCerte v. Canadian Enterprise Gas Products Ltd. (June 19, 2002; Beth Bryant, Panel Chair)

Human Rights Legislation — Effect of contracts excluding application of human rights legislation — Employment severance agreements — Release was clear and understandable to the complainant — Because the complainant chose not to seek independent legal advice, the absence of such advice in the circumstances did not invalidate the effect of the Release — Complainant was aware of the possible impact that the Release would have on human rights actions — Complaint dismissed

In a preliminary matter, the panel was asked to determine the validity and enforceability of a severance agreement signed by the complainant. The complainant was employed by the respondent as a receptionist for approximately two years. She informed the respondent that she was pregnant and that she would be taking stress leave, because employment stress was having an effect on her pregnancy. The respondent decided to terminate the complainant's employment when it discovered the complainant's poor work or uncompleted work while the complainant was on leave. The complainant was asked to sign a release before she was to receive her final pay cheque. **HELD:** The release was valid and enforceable, therefore the Commission had no jurisdiction to investigate the complaint. The panel considered the following factors in determining whether the release was valid and enforceable: (1) the actual language of the release itself as to what is included, explicitly or implicitly; (2) unconscionable conduct; (3) undue influence; (4) existence of independent legal advice; (5) duress; (6) knowledge of the party executing the release as to their rights under the Act and possibly the knowledge of the party receiving the release that a potential complaint under the Act is contemplated; and (7) any other consideration, including lack of capacity, timing, mutual mistake, forgery or fraud. The release was clear and understandable to the complainant. There was no evidence of unconscionable conduct, undue influence or duress. The complainant chose not to seek independent legal advice, therefore the absence of such advice did not invalidate the effect of the release.

Cases Considered: May Chow v. Mobil Oil Canada [1999] A.J. No. 949; Universe Tankships Inc. of Monrovia v. International Transport Workers' Federation JC PC (1982) 2 R.E.R.67 at 88 (H.L.)

Bruce England v. The Calgary Sun
(June 12, 2002; Lori G. Andreachuk, Panel Chair)

Human Rights Legislation — Effect of contracts excluding application of human rights legislation — Employment severance agreements — Complainant was aware of the possible impact that the release would have on human rights actions, and that obtaining independent legal advice was recommended by the respondent employer — Release was not unconscionable because the complainant negotiated a higher amount than was originally offered — Complainant was not under duress because the suggested time limit for signing the release was not mandatory — Complaint dismissed

Complainant employee alleged that he was a victim of discrimination on the basis of physical disability after he was terminated after 14 years employment with the respondent because he developed allergies caused by the workplace. At issue was whether the release signed by the complainant at the time of his termination was valid and enforceable. The release was general in nature and did not specifically enumerate human rights complaints and actions. **HELD:** Complaint dismissed. The panel did not have jurisdiction to hear the complaint on its merits. The release was valid and enforceable. The panel applied the following criteria which were set out in Chow v. Mobil Oil in determining whether the release was valid and enforceable: (1) the actual language of the release itself, as to what is included explicitly or implicitly; (2) unconscionability; (3) undue influence; (4) existence of independent legal advice; (5) duress; (6) the knowledge of the party executing the release as to their rights under the *Alberta Human Rights, Citizenship and Multiculturalism Act*, and the knowledge on the part of the party receiving the release that a potential claim under the *Act* is being contemplated; and (7) any other consideration, including lack of capacity, timing, mutual mistake, forgery or fraud. The complainant was aware of the possible impact that the release would have on human rights actions, and that obtaining independent legal advice was recommended by the respondent employer. The release stated in unequivocal terms that the complainant specifically released the respondent from any and all claims related to any actions whatsoever under any statute arising out of or as a result of employment or termination of employment. The release was not unconscionable because the complainant negotiated a higher amount than was originally offered in the severance package. The complainant was not under duress because the suggested time limit imposed by the respondent for signing the release was not mandatory.

Cases Considered: Chow v. Mobil Oil, [1999] A.J. 949

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14

Jacqueline Kennedy v. Save-On-Auto Limited and First Class Limo Services Limited (July 19, 2002; Colonel Delano W. Tolley (Ret'd), Panel Chair)

Discrimination — Grounds — Gender — Sexual Harassment — Area — Employment — Harassment in the form of sexually suggestive comments, kissing and breast grabbing by managing director of the respondent — Poisoned work environment — Employer liable for conduct of employee — Complainant awarded $4,000 for anguish and suffering and $1,293 in lost wages — Complaint allowed

A female employee, who was employed by the respondent for one month, brought a complaint alleging sexual harassment against her employer after the managing director of the respondent company held and kissed her, and grabbed her breasts on two different occasions. After the first incident, the complainant told the perpetrator that his advances and touching were unwelcome. Evidence also showed that the complainant was subject to verbal sexual harassment, which created a "poisoned work environment." Subsequently, the respondent gave the complainant less pay and assigned longer hours. The perpetrator was no longer employed by the respondent. **HELD:** Complaint allowed. Evidence supported allegations of sexual harassment. While the consumption of alcohol could possibly explain why the harassment occurred, it did not negate liability for sexual harassment. The employer was liable for the conduct of its employees. The respondent did not raise any valid defence nor dispute the relevant evidence. The complainant was awarded $4,000 for anguish and suffering caused by the sexual harassment, and $1,293 in lost wages.

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, s. 7

Gwen Jahelka v. Fort McMurray Catholic Board of Education (August 6, 2002; W.P. Baergen, Panel Chair)

Discrimination — Grounds — Gender — Pregnancy — Area — Employment — Accommodation to the point of undue hardship — Complainant teacher applied for position as vice-principal — She informed employer that because she was pregnant, she would be unavailable to commence duties at September but would be ready to start at Christmas — Respondent argued that it desired a candidate who would provide continuity in administration, thereby enhancing rapport with school staff and students — Respondent failed to accommodate complainant to the point of undue hardship — Respondent's concerns regarding disruption, inconvenience and expense arising from the complainant's pregnancy were secondary to the complainant's need to return to work after her pregnancy — Complaint allowed

The female complainant was a school teacher, who was employed by the respondent board for approximately 11 years, and was appointed interim vice-principal at a school pending the return of the vice-principal who was on maternity leave. At the time that this position was offered to her, she informed the school principal that she was pregnant. When she subsequently applied for an available permanent position as vice-principal, she was not interviewed for the position. She argued gender discrimination because of her pregnancy. The complainant informed the respondent that she would not be available for the commencement of the school year in September because she would be taking maternity leave followed by parental leave, but that she was ready to commence her duties at a natural break in the school year at Christmas. The respondent informed her that it was interested in filling the vacancy with a candidate who would provide continuity of administration, and enhance rapport with school staff and students. The respondent also rejected the option of leaving the position unfilled for four months until the complainant returned from her parental leave, stating that if the school functioned adequately without the position being filled, it may be difficult to justify the position at all. **HELD:** Complaint allowed. Gender and pregnancy were factors in the respondent's decision not to hire the complainant. The complainant was qualified and competent to fill the position. The position was filled by a male teacher with no prior administrative experience. The respondent, as an employer, failed to accommodate the complainant to the point of undue hardship. The respondent's concerns regarding disruption, inconvenience and expense arising from the complainant's pregnancy were secondary to the complainant's need to return to work after her pregnancy. After allowing the complaint, the panel requested submissions regarding remedy.

Appeal — The respondent appealed to the Court of Queen's Bench.

Cases Considered: Ontario (Human Rights Commission) v. Simpsons-Sears Ltd. (1985), 2 S.C.R. 536; Janssen v. Ontario Milk Marketing Board (1990), 13 C.H.R.R. D/397; Crook v. Ontario Cancer Treatment and Research Foundation, [1996], O.H.R.B.I.D. No. 28 (Ont. Bd. of Inquiry); Brooks v. Canada Safeway Ltd. (1989), 1 S.C.R. 1219; Alberta Hospitals Association v. Parcels (1992), 90 D.L.R. (4th) 703; Commission des Ecoles Catholiques de Quebec v. Gobeil (1999), 89 A.C.W.S. (3rd) 503; Labelle v. Canada (Treasury Board) (F.C.A.)

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, ss. 7, 28

Jennifer Woo v. Fort McMurray Catholic Board of Education (August 6, 2002; W.P. Baergen, Panel Chair)

Discrimination — Grounds — Gender — Pregnancy — Area — Employment — Accommodation to the point of undue hardship — Complainant teacher employed as vice-principal on a probationary contract — When she informed respondent she was pregnant and would be taking maternity leave, probationary contract was terminated prematurely — Complainant subsequently applied for positions as vice-principal and as program co-ordinator, stating preference for part-time employment — Respondent illegally terminated probationary contract — Respondent owed complainant a duty to accommodate her pregnancy and was also in breach of provisions of collective agreement — Decision to give position of program co-ordinator to another candidate was based on bona fide occupational requirements, as complainant was viewed as lacking the requisite interpersonal skills for the position — Respondent's decision not to hire complainant as vice-principal based on reasonable management prerogative of requiring full-time employment — Complaint allowed in part

The complainant was a vice-principal employed by the respondent on a probationary contract. The probationary contract was terminated when the complainant commenced her maternity leave. After completing her maternity leave, the complainant subsequently applied for positions as vice-principal and as program co-ordinator with the respondent. The complainant stated that she preferred part-time school-based positions. She was interviewed for the position as program co-ordinator, but was not interviewed for the vice-principal position. After she was unsuccessful in both applications, she brought complaints based on gender discrimination (pregnancy) arising from the termination of her probationary contract, the hiring of another person for the program co-ordinator position, and the respondent's refusal to hire her for the permanent vice-principal position. **HELD:** Complaint allowed in part. The respondent discriminated against the complainant when it terminated her probationary contract when she commenced her maternity leave. The respondent had a duty to accommodate for the complainant employee's pregnancy, which it failed to do to the point of undue hardship. The respondent was also in violation of provisions of the collective agreement, which allowed for leaves of absence in the circumstances. Regarding the program co-ordinator's position, the panel was satisfied that the decision not to hire the complainant was not based on illegal discrimination, but was rather based on bona fide occupational requirements. The complainant did not score as well as the successful applicant in the job interview, particularly in the area of interpersonal skills. The decision not to hire the complainant for the vice-principal position was based on the reasonable management prerogative of requiring a candidate who would fill the position on a full-time basis. The panel concluded by requesting submissions regarding remedy.

Appeal — The complainant appealed to Court of Queen's Bench. The respondent cross-appealed.

Cases Considered: Ontario (Human Rights Commission) v. Simpsons-Sears Ltd. (1985), 2 S.C.R. 536; Janssen v. Ontario Milk Marketing Board (1990), 13 C.H.R.R. D/397; Crook v. Ontario Cancer Treatment and Research Foundation, [1996], O.H.R.B.I.D. No. 28 (Ont. Bd. of Inquiry); Brooks v. Canada Safeway Ltd. (1989), 1 S.C.R. 1219; Alberta Hospitals Association v. Parcels (1992), 90 D.L.R. (4th) 703; Commission des Ecoles Catholiques de Quebec v. Gobeil (1999), 89 A.C.W.S. (3rd) 503; Labelle v. Canada (Treasury Board) (F.C.A.)

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, ss. 7, 28

Mohammed Husien v. OPSCO Energy Industries Ltd.
(August 16, 2002; Diane Colley-Urquhart, Panel Chair)

Discrimination — Grounds — Physical Disability — Area — Employment — Employee injured at the workplace — Employee arguing that he was unable to resume regular duties after WCB physicians pronounced complainant fit — Complainant laid off after he refused to resume regular duties — Employer duty to accommodate — Employer had multi-disciplinary team which assessed the complainant's disability and injury and formulated a plan of progressive duties to return the complainant back to regular duties — Complaint dismissed

The complainant employee was injured in a workplace accident after a steel beam fell on his leg, causing a fractured ankle and subsequent knee spasm. Approximately 19 months after the accident, the Workers' Compensation Board pronounced him to be fit to return to his former duties and denied payment of further WCB benefits. The complainant subsequently filed a human rights complaint, alleging that the respondent employer failed to adequately accommodate his injury. Initially, the complainant was ordered by WCB physicians to have sedentary duties for six weeks, which then progressed to light duties, with a final diagnosis pronouncing the complainant fit to return to regular duties after. The respondent followed the recommendations of the WCB physicians. The complainant alleged that when he returned to work with reduced and modified duties, he was encouraged to quit by his supervisor and was told that there was no work for him to do. After the WCB physicians pronounced the complainant fit to return to his regular duties, the respondent offered the complainant the choice of returning to regular duties, or accepting a severance package and being terminated from employment. The complainant refused either offer because he argued that he was not ready to resume regular duties. He was subsequently laid off. **HELD:** Complaint dismissed. The respondent was found to have accommodated the complainant to

the point of undue hardship. The respondent had a multi-disciplinary team in place to assess the complainant's injury and disability and to formulate a set of progressive duties to return the complainant to regular duties. The complainant participated in formulating these duties and was regularly informed by the respondent of any changes in such duties. Evidence of any coercion by the respondent to force the complainant to quit, or force the complainant to return to regular duties prematurely was unsubstantiated.

Cases Considered: Edgell v. Trail School District No. 11 (1996), NP/97-28 (B.C.C.H.R.); Berry v. Farm Meats Canada Ltd. (2000), Action No.0001-05097 (Alta. Q.B.); Ontario Human Rights Commission and O'Malley v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536; Central Alberta Dairy Pool v. Alberta (Human Rights Commission) (1990), 12 C.H.R.R. D/417 (S.C.C.); British Columbia (Public Service Employee Relations Comm.) v. B.C.G.E.U. (1999), 35 C.H.R.R. D/257 ("Meiorin"); British Columbia Superintendent of Motor Vehicles v. British Columbia (Council of Human Rights) (1999), 36 C.H.R.R. D/129 ("Grismer"); Central Okanagan School District No. 23 v. Renaud (1992), 16 C.H.R.R. D/425 (S.C.C.)

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 1980, c. H-11.7, s. 7(1)(a), 7(1)(b)

Rhonda Lynn Russell Chase v. Tony Condic
(November 27, 2002; Diane Colley-Urquhart, Panel Chair)

Discrimination — Grounds — Gender — Sexual Harassment — Area — Employment — Babysitter alleged she was sexually harassed by her employer — Respondent made a general denial of the allegations which was not believed by the Panel — Evidence showed the complainant was sexually harassed in a poisoned work environment — Complainant awarded $2,000 — Complaint allowed

The complainant babysitter alleged sexual harassment by the respondent employer. She was married and legally blind. The complainant's husband worked on a contract basis for the respondent. On her first day as a babysitter, the respondent asked her to show him her breasts, touched her and solicited sexual favours from her and asked her to spend the night at his residence. As a result of the respondent's advances, the complainant quit working for him. Consequently, the respondent fired the complainant's husband. The respondent denied all allegations. **HELD:** Complaint allowed. The respondent was not credible. The panel found that the complainant was subjected to unwanted sexual advances and was therefore sexually harassed in a poisoned working environment, which included the complainant feeling vulnerable and intimidated. In arriving at a remedy

and awarding the complainant $2,000 in general damages, the panel considered the Torres factors:

a. The nature of the harassment, that is, was it simply verbal or was it physical as well?
b. The degree of aggressiveness and physical contact in the harassment.
c. The ongoing nature (that is the time period) of the harassment.
d. The frequency of the harassment.
e. The age of the victim.
f. The vulnerability of the victim.
g. The psychological impact of the harassment upon the victim.

Cases Considered: Janzen v. Platy Enterprises Ltd., [1989] 10 C.H.R.R. D/6205 (S.C.C.); Torres v. Royalty Kitchenware Ltd. (1982), 3 C.H.R.R. D/858 (Ontario Board of Inquiry); Redekop and Spiering v. Kamaleddine (1977), 30 C.H.R.R. D/290

Statutes Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, s. 7(b)

Nancy Anderson, Harris Kirshenbaum, Glen Wicks, Cameron Gertz, Howard Knox, Carrie Neilson, Margaret Sharon Maher, Verna Ann Michele Gill, Mark Pesek, Keith Purdy, Jane Ellenor, Kathy Phelps, Pennilynn Leggett v. Alberta Health and Wellness (December 4, 2002; Lori G. Andreachuk, Q.C., Panel Chair)

Discrimination — Grounds — Sexual Orientation — Area — Services Customarily Available to the Public — Denial of Alberta Health Care benefits to same-sex partners and children of the relationship — Same-sex relationships not recognized by Alberta Health Care Insurance Act — Same-sex partners and children of same-sex partners not "dependents" under the Act — Definition of "spouse" or "common law spouse" — Definition of "dependent" — Statutory definition of "common law spouse" was restricted to heterosexual relationships — Denial of benefits constitutes discrimination on the basis of sexual orientation — Complainants entitled to retroactive premium payments from the time when the benefits were denied, or when the respondent knew or ought to have known the denial constitutes discrimination — No general damages were awarded — Panel did not have authority to award punitive or exemplary damages — Complaints allowed

Complainants alleged discrimination on the basis of sexual orientation arising from the denial of Alberta Health Care benefits to their same-sex partners, dependents and children. The complainants argued they were denied a service customarily available to the public. The respondent did not argue the complaint on the merits, but did object to the complainants' claim for damages arising from the denial of benefits. The complainants claimed general damages and also

sought reimbursement of premium payments made as a result of the respondent's denial of benefits. The respondent argued that the panel lacked the authority to award punitive or exemplary damages and also argued that the start date in calculating retroactive premium payments was erroneous. **HELD:** Complaints allowed. The definition of "common law spouse" under the Alberta Health Care Insurance Act and Regulations was restricted to heterosexual relationships. The denial of health care benefits was discrimination on the basis of sexual orientation in denial of services customarily available to the public. The entitlement to retroactive compensation should start at the date the status was requested as that is the crystallizing moment of the individual acts of discrimination. A human rights panel may compensate a person for wages or income lost or expenses incurred prior to two years before the date of the complaint under Section 20 of the Act. However, in the case of Nancy Anderson, whose complainant was brought in 1998, as the Supreme Court of Canada decision in Vriend was not rendered until April of 1998 her claim for retroactive compensation should commence in April of 1998. It is from this date that Alberta Health and Wellness knew or ought to have known, their actions were discrimination on the basis of "sexual orientation." No awards for general damages shall be awarded. While there is no doubt the complainants have suffered as a result of the actions taken by the respondent the award of damages will not place those discriminated against in the same position they were prior to the contravention of Human Rights, Citizenship and Multiculturalism Act, only the repayment of premiums can do this. To award damages in this context would be punitive and the award of punitive damages is outside of the jurisdiction of the Act. Definition of "common law spouse" to be read down so as to exclude reference to husband and wife.

Cases Considered: Vriend v Alberta [1998] 1.S.C.R. 493; Vogel v Manitoba [1995] 23 CHRR D/173 (Manitoba Court of Appeal); Leshner v The Government of Ontario, (1992) 16 C.H.R.R. D/184; Johnson v Sand 104 A.C.W. S.(3D) 609; B v Ontario (Human Rights Commission) Supreme Court of Canada file No. 28383, October 31st, 2002; Gwinner v Alberta A.J. No. 1045

Statutes Considered: Human Rights, Citizenship and Multiculturalism Act Act, R.S.A. 2000, c. H-14, ss. 4, 20, 32, 32(1)(b)(v), 34; Health Insurance Premiums Regulations, Alta. Reg. 217/81, ss. 1(1)(g), 1(1)(h), 2, 102 (Schedule); Alberta Health Care Insurance Act R.S.A., 1980 c A-24, s. 1(i)

Appeal — An appeal was filed by the complainants to the Court of Queen's Bench on this case with respect to the issue of general damages only. The appeal was later discontinued due to settlement.

Sonia Jacknife and Cassandra Collins v. Elizabeth Metis Settlement (December 6, 2002; H Colonel Delano W. Tolley, Panel Chair)

Discrimination — Grounds — Physical disability — Area — Employment — Random drug and alcohol testing — Physical disability, what constitutes — Perceived disability — Respondent employer implemented a drug and alcohol testing policy of employees — After refusing to submit to the tests, the complainants were dismissed from employment with the respondent — Complainants alleged discrimination on basis of physical disability — Panel found drug and alcohol testing policy was within the authority of the respondent and was justified because drug and alcohol abuse rampant in the community — Complainant Jacknife required to drive to and from work and also drive during the course of employment, therefore sobriety a bona fide occupational requirement — Complainant Collins failed to show she had a physical disability therefore complaint dismissed — Respondent had shown evidence of accommodating in the past employees who had alcohol or drug abuse problems — Complaints dismissed

The complainants were employees of the respondent Métis Settlement who alleged discrimination on the basis of physical disability after the Settlement Council implemented a drug and alcohol testing policy. After refusing to submit to random testing, both complainants were dismissed from their employment with the respondent. **HELD:** Complaints dismissed. The Settlement Council had the authority to create and implement a random drug and alcohol testing policy of Settlement employees. Testing policy was justified because drug and alcohol abuse was rampant in the community. Regarding the complainant Jacknife, she required a car to get to and from work and also was required to drive during the course of her employment, therefore, sobriety and drug-free condition were bona fide occupational requirements. The respondent had shown evidence of accommodating in the past employees who had drug or alcohol problem by allowing for and paying for time off and paying for attendance at rehabilitation programs. Regarding the complainant Collins, she showed no evidence of physical disability, therefore had not established discrimination on the basis of physical disability.

Appeal — The director of the Commission appealed to the Court of Queen's Bench. The Court upheld the panel decision. The director appealed to the Court of Appeal.

Cases Considered: British Columbia (Public Service Employee Relations Commission) v. B.C.G.S.E.U. ("Meorin"), [1999] 3 S.C.R. 3 (S.C.C.); Entrop v. Imperial Oil Limited (2000), 50 O.R. (3d) 18 (Ont. CA); Regina v. Campbell, [1996] M.J. No. 603 (C.A.)

Statutes and Regulations Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, s. 7; Alberta Métis Settlement Act; Constitution Act, 1982, s. 35

Kathy Hansen v. Big Dog Express Ltd. and Jonathan Grant (December 17, 2002; Diane Colley-Urquhart, Panel Chair)

Discrimination — Grounds — Gender — Pregnancy — Area — Employment — Complainant was a shipping and receiving clerk — After respondent told of the complainant's pregnancy, the good working environment deteriorated — Complainant's working hours were reduced and she was terminated after 3 months employment with the respondent — As a result of her brief employment, she was not entitled to full maternity benefits — Panel found that complainant was terminated largely because of her pregnancy — $5,000 awarded for injury to dignity and self-respect, and $8,791.26 for lost wages — Complaint allowed

Complainant alleged her employment with the respondent was terminated because she became pregnant. She worked as a freight shipping and receiving clerk. After being told of the complainant's pregnancy, the previously good working environment deteriorated, with the respondent first unilaterally reducing her employment hours and then terminating her employment after she worked 3 months. As a result of the early termination, the complainant was not entitled to full maternity benefits. The Commission director sought to add the individual as a respondent. The respondent company had since ceased operations and had disposed all its assets. **HELD:** Complaint allowed. The individual respondent was added as a party because he was the sole director and shareholder of the corporate respondent, and was also the perpetrator of the alleged discrimination. The respondent had a duty to accommodate the complainant's pregnancy, which he failed to do. Evidence established that the working environment deteriorated after the respondent became aware of the complainant's pregnancy and that the complainant's employment was terminated largely due to her pregnancy. The panel awarded to the complainant $5,000 in general damages, and $8,791.26 in lost wages.

Cases Considered: Morrison v. O'Leary Associates, (1990) (N.S. Bd. Inq). 3; Primack v. Azim; Rougeau v. Hin Yuan Holdings, (1991) B.C.H.R.D. 24; Sidhu v. Broadway Gallery (c.o.b. Takamatsu Bonsai Design) 2002, B.C.H.R.T.D. No. 9; Meorin (B.C.P.S.C. v. B.C.G.S.E.U. (1999) 3 S.C.R. 3; Vestad v. Seashell Ventures Inc. (c.o.b. Rose & Crown Pub) (2001) B.C.H.R.T.D. No. 37; Sievert v. Roycom Realty Ltd. (1994) N.S.H.R.B.I.D. No. 8; Willis v. David Anthony Phillips Properties (1987) 8 C.H.R.R. D/3847; Miller v. Sam's Pizza House (1995) 23 C.H.R.R. D/454; Cameron v. Nor Gor Castle Nursing Home

Statutes Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, s. 7(1)(a), 7(1)(b)

Appeal — The respondent has appealed to the Court of Queen's Bench.

Appendix 5

Appeals of Panel Decisions 2002 – 03

Summaries of Court decisions on appeals of panel decisions are provided below. Links to the full Court decisions are found on the Commission's Web site.

Susan L'Archeveque v. The City of Calgary
(March 6, 2003; Alberta Court of Queen's Bench, Justice R.P. Fraser)

Discrimination — Grounds — Physical Disability — Area — Employment — Accommodation, duty of employer to accommodate employee's disability to the point of undue hardship — Employee suffering from repetitive strain injury and incapable of working as full-time data entry clerk — Employer eventually placing complainant in part-time position — Reduction of working hours — Panel finding discrimination and awarding damages totaling $15,799 for lost wages, benefits and interest as well as for mental anguish — Employer appealing panel decision to court — Court holding that panel's finding of employer's discrimination and failure to accommodate reasonable and upheld — Award for lost wages, benefits and interest also upheld — Award for mental anguish excessive and reduced to $4,000 — Appeal allowed in part

The respondent, the City, appealed a panel decision (May 17, 2002), which held that the City, as an employer, discriminated against the complainant employee on the basis that the employer failed to accommodate the complainant's physical disability to the point of undue hardship. The City also appealed the remedies awarded by the panel. The complainant was forced to stop work as a data entry clerk because of bilateral repetitive strain injury, and after a failed attempt to return to her former duties, the Workers' Compensation Board (WCB) found that the complainant was not fit to return to pre-accident duties. The City initially unsuccessfully attempted to accommodate the complainant's injury by reducing her work hours of her data entry position. After a few months, the City stopped further attempts in accommodation, eventually finding a part-time position for the complainant. However, the complainant could not work two part-time positions for the respondent to replace the loss of her full-time position because of the respondent's policy prohibiting employees from holding more than one part-time position with the respondent. It was also found that the respondent did not take advantage of rehabilitation and retraining possibilities offered by the WCB, citing lack of funding or lack of job banks as its excuse. The panel found discrimination and awarded the complainant a total of $15,799.19, which included lost wages, benefits (Canada Pension, holiday pay, statutory holidays

and RRSPs) and interest, as well as $9,000 for mental anguish. **HELD:** Appeal allowed in part. The panel's finding that the respondent failed to accommodate the complainant's physical disability to the point of undue hardship was reasonable and was upheld. Evidence supported a finding that the City restricted the complainant's employment to part-time employment, thereby reducing the hours of work of the complainant. The awards for lost wages, benefits and interest were also upheld. However, the $9,000 award for mental anguish was held to be excessive. The Court held that in the absence of express statutory provisions for mental anguish in the Alberta legislation, the statutory limits found in federal and Saskatchewan human rights legislation should be used as a guide rather than the $10,000 limit in the Ontario human rights regime. The mental anguish award was therefore reduced to $4,000.

Cases Considered: Holmes v. Attorney General of Canada (1997), 97 C.L.L.C. 145,193 (F.C.T.D.); Alberta Human Rights Commission v. Central Alberta Dairy Pool (1990), 2 S.C.R. 489 (S.C.C.); Ontario Human Rights Commission and O'Malley v. Simpson-Sears Ltd. , [1985] 2 S.C.R. 536; Scott v. Lillooet School District, [1991] B.C.J. No. 3295;

Statutes and Regulations Considered: Human Rights, Multiculturalism and Citizenship Act, R.S.A. 2000, c. H-14, ss. 7(1)(b), 37; Employment Standards Code, R.S.A. 2000, c. E-9, s. 40; Judgment Interest Act

Miscellaneous Works Considered: Law of Human Rights in Canada, Practice and Procedure (2002; Canada law Book)

Alberta Report v. Alberta (Human Rights and Citizenship Commission)
(December 10, 2002; Clark J., Alberta Court of Queen's Bench)

Human Rights Legislation — Practice and Procedure — The Panel — Principles of natural justice (Audi Alteram Partem) — Panel using expert testimony from other proceedings as evidentiary basis for its own decision — Panel erred in doing so — Parties entitled to know the case to be met — Parties to be allowed opportunity to address and rebut evidence decision-maker proposes to use — Appeal allowed; matter remitted to panel for new hearing.

The respondent magazine appealed a human rights panel finding that the respondent published discriminatory (anti-Semitic) material. The appellants argued that the panel erred when it considered expert evidence from other proceedings, thereby breaching the principles of natural justice by not allowing the party to know the case it had to meet (audi alteram partem). **HELD:** Appeal allowed; matter remitted back to panel for new hearing. While judges are allowed to take judicial notice of facts which are notorious or verifiable or corroborated by

absolutely reliable sources, and administrative tribunals are not strictly bound by the rules of evidence, the panel in this case erred when it relied on expert evidence quoted in a British Columbia human rights panel decision. This went beyond taking notice of factual findings. The panel looked behind another decision to the expert evidence utilized by the decision-maker. To ensure fairness, the panel must inform the parties about any evidence that it intends to consider, which has not been formally admitted. If the panel is planning to rely on expert evidence quoted in another decision, the panel must inform all parties of this — this can occur during or after the hearing — and allow parties to: (1) address whether the evidence should be admitted; (2) challenge the weight to be accorded to the evidence; and (3) submit other evidence in rebuttal.

Cases Considered: Canadian Jewish Congress v. North Shore Free Press Ltd. (No. 7) (1997), 30 C.H.R.R. D/5 (B.C. Trib.); Abrams v. North Shore Free Press Ltd. (No. 3) (1999), 33 C.H.R.R. D/435 (B.C. Trib.); Kane v. University of British Columbia, [1980] 1 S.C.R. 1105; Cherkewich v. Cherkewich (2001), 292 A.R. 281 (Q.B.); R. v. Williams, [1998] 1 S.C.R. 1128; R. v. Whittaker (2001), 301 A.R. 136 (Q.B.); Levesque v. Levesque (1994), 155 A.R. 26:

Statutes Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, ss. 26(2), 33

Miscellaneous Works Considered: . Jones & A.S. de Villars, Principles of Administrative Law, (3d) (Scarborough: Carswell, 1999); J. Sopinka, S.N. Lederman & A.W. Bryant, The Law of Evidence in Canada, (2d) (Toronto: Butterworths, 1999)

Edmonton (City) v. Alberta (Human Rights and Citizenship Commission) and Donna Martyn
(November 21, 2002; Greckol J., Alberta Court of Queen's Bench)

Human Rights Legislation — Practice and Procedure — The panel — Jurisdiction — Question of mixed fact and law — Issues whether respondent taxi commission a "person" and whether respondent City and Province providing taxi services — Respondents sought declaration that panel did not have jurisdiction to adjudicate complaint, or in the alternative, sought judicial review in the nature of prohibition preventing panel from hearing complaint — Preliminary application challenging jurisdiction of panel inappropriate — Panel had jurisdiction to determine these issues, once evidentiary basis established, in the course of adjudicating on the merits of the complaint — Application dismissed.

The complainant alleged that she was discriminated against on the basis of physical disability when the respondents denied her 24-hour wheelchair-accessible taxi service, thereby denying to her services customarily available to the public. The respondent City,

Taxi Commission, and Province argued that the Commission lacked jurisdiction under the Human Rights, Citizenship and Multiculturalism Act because the respondent City and Province did not provide taxi services to the public, and further that the Taxi Commission was not a "person" within the meaning of the Act. The panel had initially determined that it had insufficient evidence to rule on either issue. These respondents sought a declaration that the panel lacked jurisdiction to hear the complaint, and in the alternative judicial review in the nature of prohibition, on a preliminary application, to prevent the panel from hearing the complaint. **HELD:** Application dismissed. The decision of the panel that it had insufficient evidence before it to decide this preliminary question was correct. The issue of whether the Taxi Commission is a "person" for the purposes of the Act was one which should be determined in the fullness of time, after consideration of the evidence respecting the Taxi Commission, and the body of law concerning the same or similar questions. The decision of the panel that it had insufficient evidence before it to decide whether the City and Taxi Commission were proper respondents to the claim was correct. The question of whether they were responsible for any discrimination in the provision of taxi services to the disabled in Edmonton contrary to the provisions of the Act was one which should be determined after consideration of the evidence respecting the Taxi Commission and the City, and the body of law concerning the same or similar questions. Appropriate remedies, if any, would flow by application of the ample remedial powers the panel could choose to apply in response to the facts so found. An interim application of this kind, challenging the jurisdiction of the panel to proceed in relation to the City and the Taxi Commission, was properly an application for judicial review as the respondent to the complaint was, in effect, seeking to prohibit the panel from making the jurisdictional determinations and from hearing the merits of the claim. A review of an interim ruling by a panel appointed under the Act should be allowed only in exceptional circumstances. The questions posed to the panel were ones of mixed fact and law and that a proper determination of those questions required an evidentiary basis. The panel correctly declined to make those determinations in the absence of full consideration of the relevant facts. The court declined to exercise its discretion to grant judicial review so as to prohibit the panel from deciding these questions that were within its jurisdiction to decide while determining the merits of the complaint.

Cases Considered: Mis v. The Chief Commissioner of the Alberta Human Rights and Citizenship Commission, 2002 ABQB 570, 293 A.R. 391 (Q.B.); CUPE, Local 38 v. Calgary Police Association (1987), 79 A.R. 63 (Q.B.)); Re Prue and City of Edmonton et. al. (1984), 57 A.R. 140 (Q.B); Engineering Students' Society, University of Saskatchewan v.

Saskatchewan (Human Rights Board of Inquiry) (1989), 56 D.L.R. (4th) 604 (Sask. C.A.); Ontario (Human Rights Commission) v. Brillinger, [2002] O.J. No. 2375; Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 62; C.N.R. v. Canada (Human Rights Commission) (1985), 20 D.L.R. (4th) 668; Vriend v. Alberta, [1998] 1 S.C.R. 493; British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)(Grismer), [1999] 3 S.C.R. 868; C.N.R. v. Canada (Human Rights Comm.), [1987] 1 S.C.R. 1114; Calgary Co-operative Association v. Alberta Human Rights and Citizenship Commission, April 29, 1998, unreported, Q.B. Action No. 9701 — 16663; Montgomery v. Edmonton (City) Police Service (1999), 253 A.R. 222; Amoco Canada Petroleum Co. v. Alberta (Minister of Municipal Affairs) (2000), 271 A.R. 161

Statutes Considered: Canadian Charter of Rights and Freedoms, 1982, s. 15; Human Rights, Citizenship and Multiculturalism Act, R.S.A. 2000, c. H-14, ss. 4, 4(a), 4(b), 20, 20(1), 27, 32, 33(1), 37, 37(1), 37(3)(c), 37(4), 44(1), 44(1)(k); Interpretation Act, R.S.A. 2000, c. I-8, s. 28(1)(nn). Municipal Government Act, R.S.A. 2000, c. M-26, ss. 2(a), 7, 8, 9, 10, 145, 203(1).

Miscellaneous Works Considered: David P. Jones and Anne S. de Villars, Principles of Administrative Law, (3d) (Edmonton: Carswell, 1999); Brown & Evans J., Judicial Review of Administrative Action in Canada (Toronto: Canvasback Publishing, Looseleaf, 1998)

Irene Gwinner, Arlene H. Stephens, Donna P. Hancharyk, Louise Rusinek and Rose Bolin, and Director of the Human Rights and Citizenship Commission v. Alberta (Minister Responsible for Alberta Human Resources and Employment)
(August 26, 2002; Greckol J., Alberta Court of Queen's Bench)

Discrimination — Grounds — Marital status — Area — Services customarily available to the public — Widows Pension Act benefits — Benefits not payable to divorced or single women — Panel finding discrimination but holding discriminatory legislation reasonably justified — Panel erred in its analysis regarding its finding of discrimination and the defence of reasonable justification — The supremacy of human rights legislation gave the panel the authority to declare discriminatory legislation inoperative — Analysis and case law applicable to breaches of the Canadian Charter of Rights and Freedoms could in some circumstances be used in analysis of provincial human rights complaints — Using a purposive and comparative analysis, the Widows' Pension Act (WPA) was discriminatory when it denied benefits to divorced or single women — While there was a rational connection shown between the WPA's purpose of providing an income bridge to the widowed of middle age, who are poor or have low income because of unemployability and disrupted dependency, and the exclusion of

the single or never-married, the omission or exclusion of the divorced, separated, or single does not minimally impair the rights of the complainants — respondent government ordered to cease current and future similar contravention — Appeal allowed

Appeal of human rights panel decision holding that Widows Pension benefits eligibility denied to divorced or single women was discriminatory but that the legislative scheme was reasonable and justifiable. The Widows' Pension Act (WPA) and Regulations were enacted in 1983 to assist people who had been dependant on and reliant upon the support of a spouse, who had arranged their lives in such a way that they were usually at home taking care of the kids in those days and didn't have labour force attachment and then were older and anticipating getting seniors' benefits at age 65 and then having financial support gone suddenly. **HELD:** Appeal allowed. The supremacy of the Human Rights, Citizenship and Multiculturalism Act allows for broad remedial powers which may result in a human rights panel declaring discriminatory legislation inoperative. Further, analysis and case law dealing with the Canadian Charter or Rights and Freedoms may in some instances be applied to provincial human rights complaints. Using a comparative and purposive analysis, the Court concluded that the WPA and Regulations was discriminatory. The WPA is intended to provide subsistence income for people, demographically largely women, in the age group 55 to 64, who are poor due to unemployability and death of their presumed source of support. The actual needs of women who are in comparable circumstances but who are separated, divorced or single are not recognized, addressed, or accommodated in any way by the legislation, which has a threshold denial of access to pension and benefits on the basis of marital status alone. The legislation, on its face, does not take into account the needs, capacities and circumstances of the single or never-married, so as to show that the dignity of that group is not harmed by the exclusion. Under-inclusive ameliorative legislation that excludes from its scope the members of a historically disadvantaged group will rarely escape the charge of discrimination. The WPA did not exclude a more advantaged group. The panel erred in failing to apply an appropriate legal analysis to the facts and issues raised by the complaints. Second, the panel erred in failing to take into consideration the supremacy nature of the Human Rights, Citizenship and Multiculturalism Act confirmed in s. 1(1). What was at issue in this case was whether the Widows' Pension Act and program were prima facie discriminatory and contrary to the Human Rights, Citizenship and Multiculturalism Act. Having concluded that they were, the next question was whether such discrimination is reasonable and justifiable. While there was a rational connection shown between the WPA's purpose of providing an income bridge to the widowed of middle age, who are poor or have low income because

of unemployability and disrupted dependency, and the exclusion of the single or never-married, the omission or exclusion of the divorced, separated, or single does not minimally impair the rights of the complainants. The panel erred in finding that although the WPA and program prima facie discriminate on the basis of the marital status of being divorced and separated, the discrimination was reasonable and justifiable in the circumstances. In relation to the divorced and separated, the government had not met its onus to establish that the WPA and program reasonably and justifiable deny pension and benefits on the basis of marital status. The WPA is indefensibly discriminatory, for it perpetuates the view that people in those protected groups — the divorced and separated — are less capable, and less worthy of recognition or value as human beings or as members of Alberta society. The exclusion of the divorced and separated from the WPA on the basis of their marital status violates their human dignity. The respondent was ordered to cease the contraventions complained of, and also to cease future similar contraventions, and further to compensate the parties for benefit payments for the time they would have otherwise been eligible.

Cases Considered: Andrews v. Law Society (British Columbia), [1989] 1 S.C.R. 143 [Andrews]; Battlefords and District Co-operative Ltd. v. Gibbs, [1996] 3 S.C.R. 566 [Battlefords]; Benner v. Canada (Secretary of State), [1997] 1 S.C.R. 358 [Benner]; British Columbia (Public Service Employee Relations Commission) v. British Columbia Government and Service Employees' Union (B.C.G.S.E.U.), [1999] 3 S.C.R. 3 [Meiorin]; British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), [1999] 3 S.C.R. 868 [Grismer]; Brooks v. Canada Safeway Ltd., [1989] 1 S.C.R. 1219 [Brooks]; C.N.R. v. Canada (Human Rights Comm.), [1987] 1 S.C.R. 1114 [C.N.R.]; Calgary (City) Electric System v. Weitmann (2001), 292 A.R. 295 (Q.B.) [Weitmann]; Canada (Attorney General) v. Druken (1988), 53 D.L.R. (4th) 29 (F.C.A.), leave to appeal denied (1989) 55 D.L.R. (4th) vii (SCC) [Druken]; City of Montreal et al. v. Commission des droits de la personne et des droits de la jeunesse du Quebec et al., [2000] 1 S.C.R. 665 [City of Montreal]; Collins v. Canada (T.D.), [2000] 2 F.C. 3 (T.D.), aff'd (2002), 285 N.R. 359 (F.C.A.) [Collins]; Cominco Ltd. (Certain Kimberly Operations Employees) v. Cominco Ltd., [2001] B.C.H.R.T.D. No. 46; Dame v. South Fraser Health Region, [2002] B.C.H.R.T.D. No. 22; Dickason v. University of Alberta, [1992] 2 S.C.R. 1103 [Dickason]; Egan v. Canada, [1995] 2 S.C.R. 513 [Egan]; Eldridge v. British Columbia (Attorney General), [1997] 3 S.C.R. 624 [Eldridge]; Falkiner v. Ontario (Ministry of Community and Social Services, Income Maintenance Branch) (2000), 49 O.R. (3d) 564 (C.A.) [Falkiner]; Hodge v. Canada (Minister of Human Resources Development), 2002 FCA 243, [2002] F.C.J. No. 900 [Hodge]; Insurance Company of B.C. v. Heerspink, [1982] 2 S.C.R. 145, 43 N.R. 168 [Heerspink]; Law v.

Canada (Minister of Employment and Immigration), [1999] 1 S.C.R. 497 [Law]; M. v. H., [1999] 2 S.C.R. 3 [M. v. H.]; Marzetti v. Marzetti, [1994] 2 S.C.R. 765 [Marzetti]; Miron v. Trudel, [1995] 2 S.C.R. 418 [Miron]; Moge v. Moge, [1992] 3 S.C.R. 813 [Moge]; Nixon v. Vancouver Rape Relief Society, [2001] B.C.H.R.T.D. No. 1 [Nixon]; Ontario (Human Rights Commission) v. Ontario (Ministry of Health) (1994), 21 C.H.R.R. D/259 (Ont. C.A.) [Ontario (Ministry of Health)]; Ont. Human Rights Comm. v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536 [Simpson-Sears]; R. v. Oakes, [1986] 1 S.C.R. 103 [Oakes]; Re Attorney-General for Alberta and Gares et al. (1976), 67 D.L.R. (3rd) 635 (Alta. S.C.T.D.) [Gares]; RJR-McDonald Inc. v. Canada (Attorney General), [1995] 3 S.C.R. 199 [RJR]; Taylor v. Rossu (1998), 161 D.L.R. (4th) 266 (Alta. C.A.); Thibaudeau v. Canada, [1995] 2 S.C.R. 627 [Thibaudeau]; Vriend v. Alberta, [1998] 1 S.C.R. 493 [Vriend]; Wignall v. Canada (Dept. of National Revenue Taxation), [2001] C.H.R.D. No. 9 [Wignall];Winnipeg School Division No. 1 v. Craton, [1985] 2 S.C.R. 150 [Winnipeg School Division]; Zurich Insurance Co. v. Ontario (Human Rights Commission), [1992] 2 S.C.R. 321 [Zurich].

Statutes Considered: Assured Income for the Severely Handicapped Act, R.S.A. 1980, c. A-48 [now R.S.A. 2000, c. A-45]; Canadian Charter of Rights and Freedoms, s. 15(1). Canadian Human Rights Act, S.C. 1976-77, c. 33 (now R.S.C. 1985, c. H-6); Human Rights, Citizenship and Multiculturalism Act, R.S.A.1980, c. H-11.7 (now R.S.A. 2000, c. H-14); Individual's Rights Protection Act, R.S.A. 1980, c. I-2 (am. 1985, c. 33; am. 1990, c. 23); Social Development Act, R.S.A. 1980, c. S-16 (now R.S.A. 2000, c. S-16); Social Allowance Regulation, A.R. 213/93; Unemployment Insurance Act, 1971, S.C. 1970-71-72, c. 48; Widows' Pension Act, S.A. 1983, c. W-7.5 (now R.S.A. 2000, c.-7); Widows' Pension Regulation, A.R. 166/83.

Miscellaneous Works Considered: Barbara K., ed., The Canadian Oxford Dictionary (Don Mills: Oxford University Press, 1998); Sullivan R., ed., Driedger on the Construction of Statutes, 3rd ed. (London: Butterworths, 1994); Tarnopolsky, W.S. Discrimination and the Law, looseleaf (Toronto: R. De Boo, 1985)

Appeal: The respondent has appealed this decision to the Court of Appeal.

409205 Alberta Ltd. and Voco Property Group v. Alberta Human Rights and Citizenship Commission and Glenn Miller (July 16, 2002; Smith J., Alberta Court of Queen's Bench)

Discrimination — Grounds — Source of Income — Area — Tenancy — Appeal from panel finding discrimination and award for damages — Respondent landlord raising rent of premises occupied by tenant on income assistance — Raising rent and refusing to apply for subsidy

forced tenant to vacate — Source of income was one factor in the landlord's discriminatory conduct — While panel erred in its application of a finding of accommodation by the landlord, the error did not detract from ultimate finding of discrimination — Appeal dismissed, panel decision affirmed in its entirety.

Respondent landlord appealed a finding by the human rights panel that the respondents discriminated against the complainant on the basis of source of income, arguing that the panel erred in finding discrimination even though it found that the respondents accommodated the complainant. The respondent also appealed the quantum of damages awarded by the panel to the complainant. The complainant tenant's income was from Canada Pension Plan and Alberta Income for the Severely Handicapped. The respondent landlord received rent subsidy payment from Capital Regional Housing Corporation, for which the respondent was required to make an annual application. The result of this arrangement was that the complainant paid 30% of his income for rent, with the balance of rent owing paid by the subsidy. Conflict between the parties began when the complainant acquired cats without notifying the respondent. The respondent subsequently attempted to evict the complainant, but allowed the Notices of Termination to lapse. The respondent then increased the complainant's rent and further did not apply for rent subsidy. The complainant was forced to vacate and find other, cheaper, rental premises as a result. The panel held that the rent subsidy was a source of income under the Human Rights, Citizenship and Multiculturalism Act. **HELD:** Appeal dismissed. The standard of review was whether the panel's decision was correct based on the evidence. The panel was correct in both holding that the subsidy was a source of income under the Act, and that it's finding of discrimination was based on evidence that showed that the source of income was a factor in the respondent's discriminatory conduct, albeit not the sole factor. Evidence also showed that the rent increases were not linked to alleged damage to the premises caused by the complainant's cats, but were designed to force the complainant to vacate. While the panel erred in its finding regarding the respondent's attempts to accommodate the complainant, the error did not detract from its findings of discrimination in this case.

Cases Considered: University of British Columbia v. Berg, [1993] 2 S.C.R. 353; Battlefords and District Co-operative Ltd. v. Gibb, [1996] 3 S.C.R. 566; Zurich Insurance Co. v. Ontario (Human Rights Commission), [1992] 2 S.C.R. 321; Andrews v. Law Society of British Columbia, [1989] 1 S.C.R. 143; Basi v. Canadian National Railway Company, (1988) 9 C.H.R.R. D/5029; Satish Chander, Narendra Nath Joshi v. Department of National Health & Welfare, [1995] C.H.R.D. 16, (December 13, 1995), (T.D. 16/95); Quebec (Commission des droits

de la personne) v. Desroches (1996), 149 D.L.R. (4th) 425 (Qc. C.A.); Central Okanagan School District No. 23 v. Renaud, [1992] 2 S.C.R. 970; British Columbia Government and Service Employees' Union v. Public Service Employee Relations Commission et al., [1999] 176 D.L.R. (4th) 1 (S.C.C.); Thwaites v. Canada (Armed Forces) (1993), 19 C.H.R.R. D/259 (Can. Human Rights Tribunal)

Statutes Considered: Human Rights, Citizenship and Multiculturalism Act, R.S.A. 1980, c. H-11.7, s. 4, 4(b), 23(4), 28(1)(b)(v); Public Inquiries Act, R.S.A. 1980, c. P-29, s. 3

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